

## **Expectations of the Bar from Young Professionals**

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### **Introduction :**

Bombay Chartered Accountants' Society, The Chamber of Tax Consultants, and the Western India Regional Council of ICAI have organised a two-day seminar on 3<sup>rd</sup> and 4<sup>th</sup> November 2023 on the subject of **“Art of Representation before Appellate Authorities”**.

I have been requested to speak on the subject of **“Expectations of the Bar from Young Professionals”**.

Our chamber has prepared the summary of the lecture which can be a valuable resource for young professionals to establish themselves in the field of tax litigation practice before the Income Tax Appellate Tribunal by offering guidance which can help them meet the expectations of the Bar and Bench.

Every month young lawyers and Chartered Accountants approach us for guidance on pursuing **“Tax litigation practice”** as their core practice. We have written detailed articles on the subject in the Publications titled [“Practical Guide To Appearing Before The Income-tax Appellate Tribunal”](#) and [“Principles of Good Representation in Taxation Matters before Appellate Tribunal”](#)

The Tax litigation practice before the Appellate Tribunal is a very specialized field and challenging. For a lawyer or Chartered Accountant who appears before the Income-Tax Appellate Tribunal, every day is an examination, a challenge, and a learning process.

When a counsel appears before the Income Tax Appellate Tribunal (ITAT) he or she should be up to date on the law, judgments of Apex Court, High Courts, Appellate Tribunal, Circulars, Notification, General law, and facts.

Yearly more than 3000 cases are reported in various magazines, journals etc. The Research team of the ITAT Bar Association Mumbai for the benefit of tax professionals prepares a [yearly digest](#) of case laws section-wise, which are available on the website [www.itatonline.org](http://www.itatonline.org) from 2003 to 2022. One can download and take advantage of the same.

The ITAT Bar Association Mumbai has one of the finest libraries which subscribes to more than 25 tax Journals, AIR, SCC, and International Reports, journals and also online magazines, etc.

To start a law practice, one does not need a huge investment or a big office. One may have to invest in buying a coat, tie, gown, and laptop.

To achieve excellence in the profession one must study the life history of the Padmavibhushan Dr. Nani A. Palkhivala, Senior Advocate who was the President of ITAT Bar Association Mumbai from 1968 to 2002. Shri Nani A. Palkhivala who hailed from a humble middle-class working family, became one of the greatest lawyers and legends of our country. It is worth studying the professional excellency achieved by Mr. Palkhivala and other legends of the tax profession, such as Mr. R.J. Kolah, and Mr. S.P. Mehta as they provide us with insights about how they have been able to excel in the profession. One may read the article published in the Journal of the AIFTP Federation, "[A Tribute to the stalwarts of the Tax Bar](#)" (August 2003)

In the earlier days, it was difficult to get important judgments as the same were not reported and very few had access to them. Now, technological innovation has made it easy since all the judgments are available on the internet for free. To become a successful tax litigation counsel, one must have the patience and determination to wait for at least 10 years to be recognized as a taxation counsel. Before deciding to become a tax litigation counsel, one may have to consider the pendency of cases in tax litigation before the Appellate Tribunal. In the year 1998 - 99, the sanctioned Benches

of the Appellate Tribunal was 53, whereas the pendency was 3,00,597. At present, the sanctioned strength of the Appellate Tribunal is 63 Benches and the [total pendency of tax matters](#) before the Appellate Tribunal as of 01-10-23 is 33,816 only of which 4,785 are in Mumbai. . There are more than 4,39,000 appeals pending before the Commissioner (Appeals), as of 31-07-2023. At least 50% of appeals i.e., 2,19,500 appeals are expected to be filed before the Income-tax Appellate Tribunal. This is the only Institution in the country, where the tax litigants are getting justice within four months of the filing of the Appeals. For speedy disposal of matters, the teamwork of the Honourable President, Vice-Presidents, Members, Tax Bar and Departmental Representatives deserves to be appreciated.

For better representation before the Income-tax Appellate Tribunal, we have penned down a few suggestions for the consideration of tax professionals which are as under:

- 1. Drafting the grounds of appeal, signing the appeal memo, filing of the paper book, Vakalatnama / Power of attorney, Dress regulation, and Adjournment application.**

As per Rule 13 of the Income-tax (Appellate Tribunal) Rules, 1963 (ITAT Rules) read with section 253(1) of the Income-tax Act, 1961, the Assessing Officer concerned shall be made a respondent to the appeal.

As per Rule 8 Grounds of appeal should be without any argument or narrative and such grounds should be numbered consecutively.

Rule 47(1) of the Income-Tax Rules, 1962, prescribes the Form of appeal and memorandum of cross-objections to the Appellate Tribunal (i.e., Form No. 36 and 36A). As per Rule 45 (3) of the Income-tax Rules 1962, the Form of appeal shall be verified by the person who is authorized to verify the return of income under section 140 of the Act as applicable to the assessee. Rectification application under section

254(2) of the Act has to be signed by the person who is authorised to sign the appeal and not by an Authorised Representative of the Assessee. The Hon'ble Income-tax Appellate Tribunal Mumbai Bench in the case of [Bridge India Fund v. ACIT \(ITA Nos. 457 & 458/Mum/2023 And SA 49 and 50/M/2023\) dated August 01, 2023 \(Mum\)\(Trib\)](#), held that Form 35A has to be signed by the assessee only and Advocate cannot sign the Form. In **Bangalore Electricity Supply Co Ltd. v. DCIT (2022) 195 ITD 188 (Bang)(Trib)**, the appeal was verified by the General Manager of the assessee company who did not hold a valid Power of Attorney. The appeal was dismissed in limine.

While drafting the grounds of appeal the assessee should not use harsh words. It should be in the simple language.

When a paper book is filed it has to be signed by the person who is authorised to appear or who has the authority to sign. The certificate has to be properly verified and very clearly should state which are filed before the lower Authorities. Each page of the paper book must be initiated or signed. Giving a wrong certificate may lead to taking action against the person who has signed the certificate as per the law.

An adjournment application is required to be filed well in advance. It has to be signed by the assessee or the Authorised Representative who has the authority to appear in the matter. The adjournment is also appearing before the Income Tax Appellate Tribunal hence the person who is authorised to appear as per section 288 of the Income-tax Act can appear and request for an adjournment. Income-Tax (Appellate Tribunal) Rules 1963 Rule 17A prescribes the dress regulation for the Authorised Representatives. The Authorised representative belongs to a profession like that of lawyers or Chartered Accountants and they have been prescribed a dress for appearing in their professional capacity before any Court, Tribunal or other such authority, they may at their option appear in that dress in lieu of the dress mentioned in

Rule 17A (ii) (a ), 17A(ii)(b). All other persons appearing before the Tribunal shall be properly dressed.

An authority letter is required to be filed before appearing before the Income Tax Appellate Tribunal. It has to be properly stamped as applicable in the respective State. In Maharashtra as per The Bombay Court Fee Act 1959, Schedule II item No.12. (Mukhatnama or Vaklatnama) it is Rs.10/- and if he/she is a member of – the Maharashtra Advocates Welfare Fund Act, 1981, the additional stamp of Rs.20/- has to be affixed as prescribed by The Maharashtra Bar Council Section 18 of the Act. The Chartered Accountants and Tax practitioners can appear by filing a special power of Attorney or General power of Attorney. As per Maharashtra Stamp Act, 1958, Article 48, the stamp paper for General Power of Attorney in Maharashtra / special power of Attorney is Rs.500/-. Refer. President D.O. No. P/ 7/2003 dated (2003) 185 CTR (N& V) 48: Stamp duty on documents authorising appearance on behalf of the assessee. Board **Circular No. 50 (XL-43 ) D of 1956, dated 28<sup>th</sup> December 1956, (1974) 3 ITR 8 (St), C.B.R.Circular No.9 (XL-48 ) of 1958, dated May 13, (1958) 34 ITR 19 (St).**

The Bar Council of India Rules, 1976, neither permit nor allow a Senior Advocate to file a Vakakalathnama or to appear without a Junior Advocate in any Court or Tribunal. Refer to E.S. Reddi v. The Chief Secretary Government of AP. (1987) SC 1550. Therefore, when a Senior Advocate appears before the Appellate Tribunal he/she need not file the Vakalathnama, the Vakalathnama of the Advocate who briefs him has to be filed.

If any representative has filed the Vakalathnama / or power of attorney, if another Advocate or Chartered Accountant is authorised then before appearing, the counsel has to get no objection from the Authorised Representative who has filed the Vakalathnama / Power of

Attorney. Once Vakalatnama is filed, it cannot be withdrawn without the permission of the Court.

If there is more than one appeal for different assessment years, then Vakalathnama is required to be filed for each appeal separately. Similarly, for stay applications and miscellaneous applications, separate vakalathnama and/or power of attorney are required to be filed.

If an advocate is appearing with a Chartered Accountant then separate Vakalathnam is required for the Advocate and Power of Attorney for the Chartered Accountant.

Once Vakalathama / or power of attorney is filed, 100% commitment to the matter must be given till the matter is over. Once the matter is argued no post-mortem of the matter is desirable. If you are aggrieved file an appeal to Higher Forum.

## **2. How to address the Honourable Members of the Appellate Tribunal.**

As per the convention, the Honourable Members are addressed as “Your Honour”. However, some members desired that they may be addressed as “Sir”. Some representatives address the Honourable Members as “Your Lordships” which is improper and needs to be avoided. When a Judge is presiding over the Bench, The Honourable Jude may be addressed as “His Lordship” or “Your Honour”.

Recently [Hon’ble Justice P.S. Narasimha](#), Supreme Court opposed to the practice of addressing Judges as “My Lord” or “Your Lordship” as these are colonial-era relic and sign of slavery. He also referred to [2006 Bar Council of India](#) resolution deciding no advocate would address Judges as “My Lord” or “Your Lordship”, however the same was not followed in practice.

### **3. Income-tax Act and Rules**

For better representation, one must always carry the Income-tax Act and Rules Book. It is desirable to carry the relevant year's Income-tax Act, and also the latest Income-tax Act. Normally in the Court Room, the latest Income-tax Act and Rules are kept. If one has to refer to a particular section fix the flap and refer to the page number while addressing the Bench, which will be very convenient for members to refer to immediately.

### **4. Reputation building.**

A few years back, while inaugurating the Tax Conference in Mumbai, Honourable Shri Justice B. N. Srikrishna, Judge, Supreme Court of India, stated that the technology innovation would help for the preparation of the matter. However, when a matter is represented before the Court, it is the reputation of the counsel among the judges which is very important. Judges will build their confidence in a particular lawyer by seeing his/her representation before the bench, over the years in the Court. Twenty years back, one of the commissioners of Income tax shared with us that Shri S. P. Mehta one of the well-known lawyers of Mumbai, had such a high reputation that whatever facts he stated, were believed without any verification. Shri S. P. Mehta never misguided the department for getting any relief to the Assessee. Whatever may be the temptation, young practitioners should not be involved in any unethical practice. One of the well-known senior Chartered Accountants Shri N. C. Mehta shared his experience with us when he started his practice. One Officer desired some consideration for giving a favourable order, which he refused. The Officer has made a huge addition, he lost in the first appeal, but he won in the Tribunal. He told us that thereafter no officer dared to ask any favour from him. His big corporate clients appreciated his professional ethics. He developed huge practice without compromising on the values and ethics of the

profession. One should have the courage and conviction that whatever may be the temptation, one will not compromise on values and ethical standards. While addressing the Padma Vibhushan Dr Nani Palkivala Memorial Tax Moot Court competition on October 28, 2023, The honourable President of the ITAT Honourable Shri Justice CV Bhadang and Honourable Vice-President Shri G. S. Pannu, advocated that the advocate or Chartered Accountant must put his best case for his client before the Court. This, however, does not absolve him of responsibility as an Officer of the Court. A dual responsibility is cast on him. The reputation of a lawyer will depend largely upon his behaviour in Court which should be impeachable.

## **5. Facts**

When a counsel represents before the Tribunal, he/she has to master the facts. One may have to read the order of the Assessing Officer and CIT(A) at least three times. One may have to go through the paper book minutely. When a question is asked by the Honourable Members, the representative must be able to answer by giving a reference in the paper book. In ITAT, the revenue is represented by Commissioners or Sr. Revenue officials and they are well conversant with the relevant facts. It is always desirable to request the assessee or Chartered accountant who appeared before the lower authorities to be present when the matter is argued. Sometimes Members may require certain clarification on facts, which can be easily answered. It has been observed that young professionals while arguing the matters do not narrate the facts, but start with case laws. If one can present the facts lucidly, it will be easy to persuade the Honourable Members thereafter. When the Honourable Member is making a point, one has to listen carefully without interrupting.

## **6. Skill of persuasion.**

Representation is a persuasion skill. We may know the case which we



are arguing very well but we should be able to convince the judges who have to deliver the judgment. An extract from the article published in AIFTP written by Shri M. L. Bhakta (2003) AIFTPJ. P. 49 about Shri R. J. Kolah reads as under 'Justice J. C. Shah – who was known to be a very firm, strict and decisive judge told Mr Kolah “Mr. Kolah, we have read the judgment and Mr. Desai has also read the judgement. There is no need for you to read it again. “Mr. Kolah – without being perturbed by the firm tone of the learned Judge and without any hesitation, but with due respect in his tone, replied firmly **“My lords, your lordships have read the judgment in your way and my friend has read it in the way it suits him. Your lordship will now read the judgment with me in my way”** The judges quietly allowed Mr. Kolah to read the judgment and advanced his arguments to support it while reading. Ultimately, the judges decided the appeal in favour of our clients, the assessee”. As a lawyer, our job is to convey and convince and not to impress.

#### **7. Law :**

To understand the basics of the Income-tax Act, 1961 one must read “Kanga and Palkhivala’s **“The Law and Practice of Income Tax”**, and the judgments reported from 1 to 100 ITRs which deal with basic concepts of taxation. Once a concept is clear, it is very easy to make an effective representation. The Bench which hears the matter consists of Judicial Members and Accountant Members, who have vast experience. Some of the members are well versed with the latest case laws and the developments in law. In the Income Tax Appellate Tribunal, the departmental representatives are also well versed with the law because of their experience in the field and use of technology. If the Assessing Officer or Commissioner (Appeals) has referred any case law, read the case law referred, study the facts and try to distinguish and explain as to how it does not apply to the facts of the case.

#### **8. Reference to case laws**

Before we refer to any case law, we have to read it minutely, we have to study the ratio and then the case law may be cited. One should not go with the head notes given by various journals or magazines, because sometimes it may be misleading. We have to refer to the para in which the ratio is laid down by the Court. If the issue is covered by the Apex Court, one may refer only to the judgment of the Apex Court. If the issue is covered by the Jurisdictional High Court then refer to the Judgment of Jurisdictional High Court. If there is no jurisdictional High Court, then refer to the Judgments of other High Courts. If no judgments of the High Court are available, refer to the order of the Tribunal of the same Zone and in the absence of such an order one may refer to the orders of other Benches of the Tribunals. It is not necessary to cite more judgments but it is desirable to cite the latest judgments, which normally refer to all the earlier judgments. While citing the judgments, make sure that the said judgment is not reversed by the High Court or Apex Court. While relying upon any order it is essential to check the provision of law dealt with and whether there have been any amendments in the section since then. Sometimes the decision may not apply to the relevant assessment year because of the changes in law. In the case of **CIT v. Sun Engineering Works (1992) 198 ITR 297 (SC)** the honourable court held that the judgement of the Court has to be read as a whole in the contest it was delivered. It is neither desirable nor permissible to pick out a word or a statement from the judgment.

#### **9. Knowledge of general law**

The Income -Tax Act, 1961 refers to 92 Central Acts and various State legislations. For effective representation before the Court and Tribunal, knowledge of general law is essential including the in-depth knowledge of the Constitution of India. The Income -Tax Act is the only Act in which amendments are made every year. In the publication of the AIFTP "Tributes to the Stalwarts of the Tax Bar" i.e. three stalwarts of the Tax Bar. Shri R. J. Kolah, Shri N. A. Palkhivala and Shri S. P.

Mehta (2003) AIFTP Journal – August), one will observe that all of them started practice in all branches of general law before the High Court and thereafter specialized in taxation matters. It is their knowledge of general law that made them stalwarts of the tax Bar. Whereas, now lawyers, without having any experience in general law, start tax litigation practice. It is desired that when a young lawyer desires to join the tax litigation practice, if he/she joins the chamber of a lawyer, who practices in all branches of law including writ and after getting experience of at least three years and thereafter take up the tax practice, it will help them to excel in the profession. Our seniors, Shri Y.P. Trivedi, Senior Advocate Shri S.E. Dastur Senior Advocate and Shri V.H. Patil Advocate, all of whom had initial years of practice on general law and thereafter practised only on direct tax litigation.

**10. Observe the seniors**

Former Chief Justice of India Hon'ble Justice Mr T. S. Thakur, in a function of the Bombay Bar Association, marked that, "in earlier days, lawyers had to necessarily join the Chamber of a Senior Advocate to learn the ropes of practising in Courts. This created a healthy "**Gurukul**" system where the seniors would discipline the juniors and inculcate good practices in them. The juniors would also watch their seniors function in Court and learn the nuances of how to behave in the Courtroom. Unfortunately, the advent of several new-age "boutique" law firms has meant that the "chamber" system has fallen out of favour amongst young lawyers."

One has to closely observe leading senior professionals while arguing the matters. One may have to study how they have achieved their standing in the profession and try to adopt their good qualities.

**11. Observe the Bench before arguing the matter.**

Each Bench has its own method of conducting proceedings. By

observing the proceedings in the courtroom, one will be able to know how that Bench conducts proceedings. One should prepare his/her matter accordingly, e.g. some Members desire that the copy of the orders relied upon be furnished, whereas for other Members only citation is sufficient.

## **12. Hard work**

If one analyses all successful Senior Advocates and Chartered Accountants, one common factor is hard work. If one puts in hard work, even though he/she may not be very intelligent, he can become a successful tax litigation counsel. A few decades ago, we had to ask the well-known taxation counsel Shri Mr. D. M. Harish the question, as to what was the secret of his success. His answer was, **“work, work and work!”**. Whenever he came to the Tribunal to attend a matter, he used to sit in the Court Room, till his matter was called out. He never used to participate in **‘Library gossip’**. As soon as the matter was over, he used to leave. Except for official functions of the ITAT, he never attended any party or other function to network with others. He became a successful tax counsel only because of his hard work.

## **13. A lawyer has to be seen in the Court**

If a young lawyer desires to build his career as a tax litigation counsel, he has to be seen more in the Courtroom. Assuming, he may not have any matter in the Court, still he has to develop the habit of attending the Court every day watching the proceedings and noting down the important points argued. We have witnessed in earlier days when tax References were argued before the High Court, young lawyers used to sit in the Court and watch the proceedings and make notes. Many of them are now very successful and recognized Senior Advocates/lawyers in the taxation field. Any lawyer or chartered Accountant who desires to develop tax litigation practice he /she attends the Bombay High Court tax Bench headed

by Honourable Shri Justice K.R. Sriram for 15 days they will be able to learn precautions to be taken while drafting a petition, how to prepare the case argue the matters and able to watch how the senior Advocates and advocates argue before the Hon'ble Court. It is also desirable to attend at least a few weeks different Benches of the ITAT to watch the proceedings. One will be able to learn more while witnessing the proceedings rather than sitting in the office of a lawyer or counsel.

#### **14. Continuous reading**

One who desires to become successful as a counsellor has to devote more time in the library for reading and being up to date about the law. Due to technology and online reporting, there is more transparency in the reporting of case laws. Unless we are up to date with the law, one may not be able to make an effective representation. One of the well-known senior counsel shared his experience when asked the question about how he spared time to read law journals and magazines despite his busy schedule replied that when he was a junior, he had ample time he invested in reading which was his fixed deposit and today he is earning the interest component. Technology has made it easy to find relevant case laws on a particular point, however, while arguing the matter, it is the knowledge of a lawyer which becomes very essential to distinguish the case laws cited by the other side. As a lawyer, one should know where to find the solution.

#### **15. Contribution to the development of the Bar**

When a counsel is recognized and respected by his colleagues that will be the greatest satisfaction for him. Professional colleagues, respect fellow professionals for their contribution to the development of the Bar. Contribution to the development of the Bar is also recognized when a senior trains many juniors who will excel in the profession. Contribution is recognized when a lawyer shares his

knowledge and experience by giving lectures, contributing articles, writing books etc. We have many leading lawyers who have taken up a public cause by filing PILs in taxation matters for the benefit of tax professionals and taxpayers.

**16. Knowledge and experience of different Forums of appeals.**

For excelling in the profession, knowledge and experience of all forums of appeals is very essential. If one has experience of how representation is to be made before the First Appellate Authority and Tribunal, it will help him/her to argue the matter before the Court as well as for drafting appeals and writ petitions. Working knowledge of Apex Court will also help in advising one's client whether it would be worth approaching the APEX Court or not. It is also essential to know how the Magistrate Court deals with prosecution matters relating to taxation matters. Knowing the functioning of Commissioners and CBDT will help in advising about the circumstances in which it may be desirable to pursue administrative remedies instead of an appeal forum e.g. In case the Commissioner waives penalty under section 273A, even partially thereafter, he cannot launch the prosecution u/s. 279 of the Act. As a young lawyer, one must try to get the working knowledge of all the forums which will help him/her to become a successful lawyer. Young lawyers and Chartered Accountants should attend the High Court and watch the proceedings before the Court at least for a few months. This will help them to make better representation before the Tribunal.

**17. Teaching and writing**

If one studies the life history of most successful lawyers of taxation, one will notice that almost all of them were teaching in their earlier days. Teaching brings clarity to the thought process and improves presentation skills. To become a successful litigation lawyer, teaching will always help. One will also find most of the leading tax

lawyers of today have presented papers and written articles in their earlier days of practice. Earlier, very few magazines used to publish articles, but now, due to the internet, articles are published online and one can also express one's views through electronic media. Guidelines for selection of Senior Advocates, **Indira Jaising v. Supreme Court of India, Through Secretary General AIR 2023 Supreme Court SC 3009** five marks are to be considered for the lawyer who has done the service as a professor and also contributed articles.

**18. Respect for the Judges and the other side**

When we appear before any Court or Tribunal we have to respect the judges and humility are trait that a good counsel should possess. Similarly one cannot underestimate the capacity of the departmental representatives who have vast working experience in the tax administration. A Lawyer is an officer of the Court and hence he has to help the Court to deliver the correct judgment. Sometimes one may not win the matter but may win the heart of the Bench.

**19. Compete with yourself**

When one starts to practice, one should avoid comparing oneself with others. He/she should evaluate himself. Try to assess how much knowledge one has gained at the end of the day. If one does not win a matter, he should analyse the reason why and how he can prepare better for the next matter.

**20. Filing of fact sheet (synopsis).**

ITAT Bar Association Mumbai had a meeting on 29 -10 1993, with then Vice-President Shri T.N.C.Ranagarjan who later became the High Court Judge. He suggested that the fact sheet may be prepared in each case and presented to the Bench as an aid memoir. That suggestion was accepted by the Bar. Honourable Vice President

shared the Notice with us.

Kind attention of the Authorised Representatives of the assesseees and the Department is invited to the recommendations of the Mallimath Committee in para 8.15 of the Report “8.15. We welcome the suggestion that in writ petitions, First Appeals, Second Appeals, Civil Revision Petitions, etc. the party should be required to file a brief list of points formulated for arguments (except second appeals) with a list of authorities to be cited in respect of each point after serving the same on the counsel appearing for the opposite parties. As such a procedure would enable the court to concentrate on the real points in controversy, thus avoiding undue waste of time, the counsel for the opposite party will also not be taken by surprise. We would like to add one more requirement of filing a list of all relevant dates concerning the case arranged chronologically. We suggest that the same should be followed in criminal matters also.” Filing of fact sheets will be useful for better and quicker appreciation of the arguments while hearing the appeals in the Tribunal.

The fact sheet should preferably be a single sheet of paper containing the facts in chronological order and points formulated for argument with decisions relied on. If such a fact sheet is presented to the court before the commencement of the argument after serving a copy on the other side earlier, as observed by the Mallimath Committee, it would enable the Court to concentrate on the real points in controversy, thus avoiding undue waste of time and the opposite party also will not be taken by surprise.

Recently one of the Tax Bench of the High Court directed to file a two-page fact sheet in all the appeals by the Assessee as well as by the Revenue.

**21. Conventions:** There are conventions which Bar Members



observed over the years; A Few of them are;

- As per the convention when the matter is called by the Bench clerk only the representative should come first row and occupy the seat.
  - Tax practitioners should not read newspapers in Court, however, they can read their briefs or any other professional material.
  - Tax Practitioners should not talk or discuss in the Courtroom, this disturbs the court proceedings
  - Tax Practitioners should not drink water while sitting in the Courtroom. They can go out and drink water
  - Tax practitioners should not wear their coats inside the Courtroom when the Court proceedings are in progress.
  - Tax practitioners should not use their mobile phone inside the Courtroom
  - It has been observed that many a time for an adjournment a person who is not authorised to appear before the Court is deputed. It is desired that even for an adjournment a person who is authorised to appear may be sent and he should appear with the prescribed dress code of the ITAT
  - When mentioning a matter, if a designated senior Advocate is waiting to mention his matter/he should be allowed to mention his matter first.
  - When a practitioner leaves the Court or stands inside the Court it is desired that he/she should always do so facing the Bench.
  - When the last matter is heard and no other representative is present in the courtroom, a practitioner present must not leave the court till after the Bench Members rise.
  - As per the convention, an appellant has the right to start the arguments, and the respondent has the right to reply and counter reply if any by the appellant, however, the Court may call for further clarification from the respondent.

Counsel for the assessee should begin and should also have a right to reply **CIT v. Khemchand Ramdas (1933) 1 ITR 309 (Bom.) (HC)**. In case the A R for the appellant is narrating wrong facts the respondent may with the permission of the Court should clarify the facts.

**22. Code of ethics.**

ITAT Bar Association Mumbai, when Mr S.E. Dastur was chairman of ITAT Bar Association's Co-Ordination Committee of the All India Federation of Tax Practitioners with the help of Mr Porus Kaka and Mrs Arti Visanji as convenors has adopted [the code of ethics](#) for the members of the ITAT Bar Association Mumbai. Those who desire to practice before the ITAT must read and follow in spirit. It is available on the website.

**23. Virtual hearing of appeals**

The Honourable Supreme Court vide their order dated 06/10/2023 desired that all Courts and Tribunal should adopt Virtual hearings. ITAT started accepting the appeals in electronic mode. Virtual hearing has certain advantages as well as certain disadvantages. ITAT Bar Association Mumbai has given their valuable suggestions to the Honourable President of the ITAT. [Hon'ble Dr. D.Y. Chandrachud, Chief Justice of India while delivering the talk on inaugurating the Judicial Academy at Andhra Pradesh highlighted the use of digitalization, technology, and speedy justice and the duties & responsibilities of the judicial officers in the justice delivery system.](#)

**24. Duty to the Nation - Article 51 of the Constitution of India,1950**

In one of the conferences, Honourable Justice S.H. Kapadia former Chief Justice of India was the chief guest. After reading the code of ethics adopted by our Association, Honourable Justice told me, Mr.

Shivaram, your association has laid down the guidelines about the duty to the court, duty to clients and duty towards opponents. What about duty to the nation? In a conference like this, we can also debate the duty to the nation. One simple example could be we should avoid unnecessary adjournment, each adjournment costs the nation and taxpayers' money can be utilised for better productive purposes. Any bad law which is affecting the independence and functioning of the Institution must be opposed. For e.g., at present, the Honourable Members of the Income-tax are appointed on a tenure basis of four years. This will affect the interest of the Institution in the long term. For today one junior member sits with the Honourable member who has more than 18 years in the Institution. Senior members can guide the junior members. Imagine the situation after 20 years, all members will have less than five years of experience. How does it improve the functioning of the Institution? ITAT Bar Association Mumbai has always stood for the independence of the Institution with the support of the then President of the ITAT Honourable Shri T.V. Rajagopala Rao. Young professionals have a greater responsibility to preserve the Independence of the Institution so that the honourable Members can deliver justice without any fear.

## **25. Do's and Don't**

### **Do's:**

1. Be Punctual and learn time management.
2. Adhere to the Dress Code Regulation.
3. File Letter of Authority in advance.
4. Sincerity to work and good preparation.
5. Respect to the Chair. Be Courteous. Keep a smile. Be pleasant & humble.
6. Use simple language.
7. Be brief and precise.
8. Observe decorum in the Court.
9. Listen to all queries that may be passed by the Bench carefully

- without interruption and answer the same directly and honestly.
10. Know the important facts of both sides and plan your approach. Do not suppress facts that are adverse to your client. Instead, point it out to deal with it.
  11. The counsel should marshal the facts and narrate them properly.
  12. In opening your argument, put forth the best points that cannot be disputed and carry the Member with you by reason.
  13. Treat the opposite party with courtesy and do not decry him.
  14. Evidence, and not eloquence, prevails.
  15. When you are addressing the Bench, avoid arguing with the opponent.
  16. Be reasonable and do not waste the Court's time with technicalities.
  17. A council must have good common sense.
  18. To know the law is not enough to make a great lawyer. But you must know and apply it to the facts of your case for results.
  19. During the arguments, be cool, calm and temperate. Remember that advocacy is not a business but a profession, not a trade but a duty of honour.
  20. Know when to stop.
  21. Build your Reputation.
  22. Respect the seniors and be affectionate to the juniors.
  23. Arguments in law courts are different from oratory/speeches in public meetings.

### **Don'ts**

1. Do not mislead or give misleading facts.
2. Do not underestimate the other side.
3. Never be overconfident.
4. Avoid repetition.
5. Do not lose your temper whatever the provocation.
6. Do not get annoyed if interrupted by the Bench.
7. Do not ridicule or belittle the Departmental Representative or the Department generally.

8. Do not argue loudly.
9. Do not cite the law first. First, analyse the facts and then the law.
10. Do not argue with the Member.
11. Do not raise your voice when the hearing is in progress.

**26. Appellate Tribunal – Check List – Practical Guide for filing an appeal and Representation before Income Tax Appellate Tribunal**

1. The order received from the First Appellate Authority shall be adequately verified 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, a Rectification Application should be filed at the earliest.
3. Note the date on which the order of the Appellate Authority was communicated 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, apply for condonation of delay with supporting evidence like an 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 an appeal before the Tribunal can be paid in any challan applicable to the 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 in cash at the office of the Tribunal.
7. Practical Note for [e-filing of appeal](#) in the ITAT, one can visit [itat.gov.in](http://itat.gov.in) for e-filing.
  - a) If the appeal is against the Penalty order under section

271(1)(c), a copy of the Assessment Order shall also be filed.

b) If the appeal is against the order of the 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 the 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 the 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 the respondent in such a case and not the Assessing Officer.

10. An 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 the case of the Company, only the 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 the Managing Director, it is desirable to mention in the cover 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 an authorized representative and as soon as

the Managing Director or Director resumes office, his signature may be obtained and a revised form may be filed with a 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 the 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 a 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 a change of address, a revised form may be filed

- and the copy may be forwarded to the Assessing Officer.
18. When there is a 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 a copy of the said letter may be filed with the Registrar.
  20. In case of an authority letter/Vakalatnama, it may be desirable to file in advance, with the Registrar, and obtain the acknowledgement. Without proper authorization or Vakalatnama, it may not be advisable to appear in the matter.
  21. In case the matter is before a 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 the paper book to be handed over to the Member at the time of the hearing. It may be desirable to file an extra set of paper books as soon as the board is published and the matter is transferred to the division Bench.
  22. It is always desirable to carry at least one set of extra paper books so that if the paper book already submitted was misplaced or not kept on record, the same can be furnished at the time of the hearing.
  23. As soon as the acknowledgement 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. On some occasions, members 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 the case of **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 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 paper book No. 1 which was filed.

29. When the High Court sets aside the matter to the Tribunal, the parties concerned should make an application to the ITAT enclosing a copy of the order, to fix the matter for hearing before ITAT.

30. **Filing of Memorandum of Cross Objections**

- a) 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.
- b) 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.
- c) No Tribunal fee is payable in respect of an appeal filed as Cross

Objection.

- d) Where the assessee is 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.

### 31. **E-proceedings or virtual hearing**

The department-related Parliamentary Standing Committee on Personnel Public Grievance Law and Justice has submitted its [103rd report](#) on the functioning of the virtual courts/Court proceedings. The Committee is also of the opinion that Virtual Courts can be extended permanently to various Appellate Tribunals like TDSAT, IPAB, NCLAT etc., located across the country which do not require personal appearances of the parties/advocates. Permanent Virtual Courts can also be established for hearing matters relating to Administrative and other Tribunals at the time of final hearing. This will cut down the cost and increase the efficiency in the disposal of the cases without being unnecessarily adjourned. The Committee is also of the opinion that necessary Amendments may be brought into law to legalise Virtual Courts and their proceedings without being unnecessarily challenged before Courts.

In the 82 years of ITAT, it has gained the confidence of both the taxpayers and the Revenue authorities alike by rendering impartial decisions in a transparent manner. No other Tribunal in India has won such well-deserved popularity and confidence of the public. This was made possible due to the efforts of the earlier and present Hon'ble Presidents, Hon'ble Vice-Presidents, Hon'ble Members of the ITAT, proactive ITAT Bar Associations across the country and the Departmental Representatives who represent the Revenue before the ITAT.

When this great institution enters its 82<sup>nd</sup> year, the stakeholders have to discuss how to retain the glory of this institution and how they can further improve the justice delivery system by use of digitization and technology, so that taxpayers from remote parts of our country can get justice at their doorstep.

**Conclusion.**

In the year 2017, ITAT Bar Association Mumbai in association with the All-India Federation of Tax Practitioners published a publication titled “Income Tax Appellate Tribunal - A Fine Balance Law, Practice, Procedure and Conventions”. That publication was dedicated to Padama Vibushan's Late Dr. N.A.Palkhivala. Those who desire to read may read from the ITAT Bar Association Library.

To motivate young professionals to write research articles on direct and indirect taxes on the subjects of public importance, the ITAT Bar Association Mumbai, in association with the All-India Federation of Tax Practitioners Goods and Service Tax Practitioners Association and The Maharashtra National Law University Mumbai inviting the professionals to contribute the research paper every year and the professionals are honoured with a certificate and also honorarium. The research papers are judged by the judges of the High Court and the names of the winners are published in the yearly souvenir of Padma Vibhushan N.A. Palkivala Memorial National (Virtual) Moot Court competition and Research paper competition. It is an opportunity for young lawyers and Chartered Accountants to contribute research papers.

Tax Bar of Mumbai is considered one of the Finest Tax Bar in our Country Honourable Justice Kureshi former Chief Justice of Rajasthan High Court at a fare well function organised by the Bar Association stated “*You are an outstanding Bar having excellent seniors, very good middle-level advocates and also very talented juniors.*”

Bar and Bench are like 2 sides of a coin, both should have mutual respect and confidence in each other and all of us collectively should make a sincere attempt to preserve and retain the glory of our institution as one of the finest institutions and model institutions for other institutions. Honourable Members may also consider that in hearing the appeals, they are not merely adjudicating on the issues before them, but they are invariably deciding on the fortune of the assessee. Hence the Honourable Members of the Tribunal have a greater responsibility towards the taxpayers of our country and also maintain the honour and dignity which this institution built over 82 years of its existence.

Thank you very much. Jai hind.

(KSA Legal Research team - Mr. Rahul Hakani, Shashi Bekal, and Neelam Jadhav, Advocates)

Other useful reads:

1. [How To Be A Good Advocate & Fulfill Expectations Of Courts...](#)
2. [The Art of Advocacy by Senior Advocate Kapil Sibal.](#)
3. [How To Be A Good Advocate & Fulfill Expectations Of Courts & Clients: Tax Judge Justice Akil Kureshi Explains](#)
4. [How To Become A Successful Tax Professional, Senior Advocate N.M Ranka](#)
5. [How Can Young Professionals Become Successful In Practice? Top Lawyers Reveal Secrets](#)
6. [ITAT Foundation day: 2023](#)
7. [Vision 2022: Expectations of Stakeholders From The ITAT](#) Publications and Articles.
8. Income Tax Appellate Tribunal – A Fine Balance, law, Practice, Procedure and Conventions – Frequently Asked Questions (2017) (Edition) – The publication is dedicated to Padma Vibhushan Dr. N.A. Palkivala Senior Advocate

9. Interpretation of Taxing Statutes – Frequently Asked Questions (2016) (Edition) – The Publication is dedicated to Honourable Mr. Justice S.H. Kapadia, Former Chief Justice of India
10. Nani Palkhivala: The Courtroom Genius by Book by Arvind P. Datar and Soli Sorabjee, Senior Advocates
  
11. Honourable Justice Mr. S.B. Majumdar, Supreme Court of India - “Tribunal in next millennium” - Seven lamps of Advocacy (1. The lamp of Honesty, 2. The Lamp of Courage 3. The Lamp of Industry 4. The lamp of Wit, 5. The lamp of Eloquence,6. The Lamp of Judgement and 7. The Lamp of Fellowship) (1999) AIFTPJ -October -P. 4