

INCOME TAX APPELLATE TRIBUNAL (ITAT): LAWS, REGULATIONS, PROCEDURES, AND UPDATES UNDER THE NEW REGIME

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“Collect taxes from a taxpayer just like a bee collects honey from a flower without disturbing its petals.” ~ Chanakya in Arthashastra.

The above sweet statement from Chankya Niti, with the efflux of time, has somehow turned sour in present days. And the pain increases more when there is no one to listen to, particularly in the cases where there are wrong interpretation or application of the taxation laws, be it deliberately or inadvertently. In such a scenario, Income Tax Appellate Tribunal (ITAT) has certainly provided a ray of hope.

Since its establishment around 8 decades back, ITAT has been instrumental in resolving the disputes of income tax payers. Although the Tribunal is not a Court in true sense, but it has been vested with the powers of an Appellate Court under Civil Procedure Code. It is empowered to regulate its own procedures for proper discharging of its functions. The head office of the ITAT is situated at Mumbai, and there are more than 60 benches spreading at more than 2 dozen of different cities across the country.

Let us have a look on the relevant provisions of the Income Tax Act, 1961, and other connected material laws in this regard, so as to understand the complete process of getting benefits and reliefs from this important forum available to a taxpayer who is going under tax disputes with the income tax department.

Section 252 of the Act *inter alia* provides as follows;

252. (1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

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

(2A) An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949, or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint—

(a) a person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or

(b) one of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.

(5) The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

Appeals to the Appellate Tribunal.

Normally, an order passed by Commissioner of Income Tax (Appeals) can be challenged before the ITAT. However, law in this regard has been provided in section 253 of the Act;

253. (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 158BFA, section 250, section 270A, section 271, section 271A, section 271AAB, section 271AAC, section 271AAD, section 271J or section 272A; or

(aa) an order passed by a Joint Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271AAC, section 271AAD or section 271J; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

(c) an order passed by,—

(i) a Principal Commissioner or Commissioner under section 12AA or section 12AB or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 270A or under section 271 or under section 272A or an order passed by him under section 154 amending any such order; or

(ii) a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 263 or under section 272A or an order passed by him under section 154 amending any such order; or

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order;

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Principal Commissioner or Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order;

(f) an order passed by the prescribed authority under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.

(2) The Principal Commissioner or Commissioner may, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a [the Joint Commissioner (Appeals) or the] Commissioner (Appeals)] under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) **Every appeal under sub-section (1) or sub-section (2) shall be filed within two months from the end of the month in which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or Commissioner, as the case may be :**

Provided that in respect of any appeal under clause (b) of sub-section (1), this sub-section shall have effect as if for the words "sixty days", the words "thirty days" had been substituted.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against an order, has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of such order, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

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

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

(d) where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees:

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2), or, sub-section (2A) as it stood before its amendment by the Finance Act, 2016, or, a memorandum of cross objections referred to in sub-section (4).

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

(8) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of appeal to the Appellate Tribunal

under sub-section (2), so as to impart greater efficiency, transparency and accountability by—

(a) optimising utilisation of the resources through economies of scale and functional specialisation;

(b) introducing a team-based mechanism for appeal to the Appellate Tribunal, with dynamic jurisdiction.

(9) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (8), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

Orders of the Tribunal

Section 254 provides that;

(1) 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.

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

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end

of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253:

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

Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five 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.

(2B) The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Principal Commissioner or Commissioner.

(4) Save as provided in section 256 or section 260A, orders passed by the Appellate Tribunal on appeal shall be final.

Procedure of Appellate Tribunal.

255. (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed fifty lakh rupees, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches

thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding.

(7) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic jurisdiction.

(8) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (7), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification.

Procedure for filing appeals.

Procedure of filing appeal and other relevant laws have been provided in the Income Tax (Appellate Tribunal) Rules, 1963. Few important rules are given in brief here for the assistance of the taxpayers;

Rule 6

(1): A memorandum of appeal to the Tribunal shall be presented by the appellant in person or by an agent to the Registrar at the headquarters of the Tribunal at Bombay, or to an officer authorised in this behalf by

the Registrar, or sent by registered post addressed to the Registrar or to such officer.

(2) A memorandum of appeal sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar or to the officer authorised by the Registrar, on the day on which it is received in the office of the Tribunal at Bombay, or, as the case may be, in the office of such officer.

Contents of memorandum of appeal.

Rule 8

Every memorandum of appeal shall be written in English and shall set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative; and such grounds shall be numbered consecutively.

Cross-objections

Rule 22

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

PRACTICE NOTE FOR E-FILING IN THE ITAT PORTAL

The Appeals, Memorandum of Cross Objections, Stay Applications and Miscellaneous Applications, which, in terms of Income Tax (Appellate Tribunal) Rules, 1963, can be filed in physical mode as well as online.

An Assessee or Assessing Officer or any other person, who is entitled to file an appeal, cross objection or application before the Tribunal u/s. 253 of Income Tax Act, 1961 or relevant sections of other Direct Tax Acts, may file the same through e-Filing Portal. However, e-Filing is not mandatory as of now, but optional.

After e-Filing of an Appeal, other relevant and connected submissions e.g. Cross Objection, Stay Application or Miscellaneous Application, the acknowledgement of e-Filing and Memorandum of Appeal or

Memorandum of Cross Objection or Stay Application or Miscellaneous Application, as the case may be, along with all the prescribed enclosures are required to be presented before the Tribunal in the usual manner and time prescribed as per the existing rules.

SOME MORE IMPORTANT POINTS IN DECIDING THE MATTERS BY ITAT

- It is the duty of the Tribunal to consider the matters in detail before arriving at its decision.
- The Tribunal has powers to allow fresh claims which were not made before earlier forums such as in the ITR form etc.
- As per CBDT Circular No. 09/2024-Income Tax Dated: 17/09/2024: There is an enhancement of monetary limits for filing of appeals by the Department before ITAT. The enhanced monetary limit now is Rs. 60 lakhs.

CONCLUSION

- ✓ In a nutshell, it can be concluded that the Income Tax Appellate Tribunal is a quasi-judicial body established under the Income Tax Act of 1961 in India. It plays a crucial role in adjudicating disputes related to income tax assessments, and its decisions can significantly impact taxpayers and the revenue department. With the recent changes in tax regulations, understanding the laws, procedures, and updates regarding the ITAT is essential for both tax professionals and taxpayers.
- ✓ Various benches of the ITAT have been established at major locations across the country, so as to ensure the accessibility for taxpayers for income tax related disputes, and the same must be utilised depending upon the actual facts and circumstances of the particular case. It needs to be analysed whether orders passed by the Commissioner of Income Tax

(CIT) related to assessments as well as penalties can be challenged on the legal grounds or/and on merits.

- ✓ Time Limit for filing the appeal before ITAT is 60 days from the date of receipt of the order. However, the delay in the same may be condoned by on the justified reasons.
- ✓ Tribunal endeavours to provide adequate hearing opportunities to both the parties (the appellant and the respondent) to present their case in full details, before issuing the order based on the merits/legal grounds of the case, which can be a confirmation, modification, or reversal of the previous order.
- ✓ Recent updates in providing the e-filing facility has made the process more efficient and accessible. In the end, we must have to acknowledge the fact that the Income Tax Appellate Tribunal remains a vital institution in India's tax administration, adjudicating disputes and providing clarity on tax laws, and it will continue to play a critical role in ensuring fair and just resolution of tax-related disputes, thus, providing the ever-needed reliefs to the taxpayers of the country.

About the Author and Disclaimer

1. CA. Brijesh Baranwal is a practicing Chartered Accountant, and this article has been written pro bono for awareness and education purposes only.
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