

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi-110001
Dated: 8th March, 2018

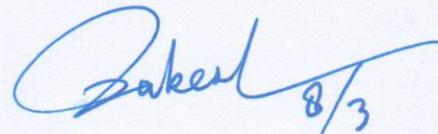
Subject: Irregularities in Appellate Orders – instructions – reg.

CBDT has issued Instruction No. 20/2003 dated 23.12.2003 directing for issue of appellate orders within 15 days of the last hearing. The Instruction was reiterated vide CBDT letter F. No. 279/Misc.53/2003-ITJ dated 19.06.2015 for strict compliance. The instructions are also applicable to orders passed by the CIT (Administrative)/ CCIT as regards matters within their purview under different sections of the Income Tax Act. The idea behind such stipulations was to alleviate undue hardship to the assessee and to have a smooth interface with the assessee.

2. Further, the Manual of Office Procedure issued by the Directorate of Organisation and Management Services mandates immediate dispatch of appeal order either by registered post or through a notice server without waiting for the appellant to file an application in this regard. Delay in uploading of appeal orders on ITBA or violation of the instructions regarding dispatch of appeal orders gives rise to suspicions about backdating of orders and/ or malafide intent on the part of officer/ officials concerned.

3. Even as the orders are dispatched by the office staff working in the office of CIT (Appeals), it is the responsibility of the CIT (Appeals) to ensure that the CBDT instructions are followed by his office staff in letter and spirit. Violation of CBDT instructions by office staff reflects adversely on the supervisory capabilities of the Officer for not being able to control/ motivate a handful of staff to follow CBDT instructions. Such supervisory failure is also violative of Rule 3(2)(i) of the CCS (Conduct) Rules, 1964.

4. Many technical and legal lapses have also been noticed during vigilance inspections of CIT (Appeals). For instance in some cases the Assessing Officers made additions towards unsecured loans and/ or share application money after detailed inquiries and bringing clear facts on record that either the creditor was not traceable or had no or meagre source of income or could not produce bank account details or could not explain the source of deposits just before advancing loan. The CsIT (Appeals) gave relief primarily on legal grounds without considering the facts on record and without making any further inquiry in the matter. In one case, the CIT (Appeals) accepted the explanation that cash deposits in bank account which were added by the Assessing Officer as unexplained, represented the business receipts of the assessee, despite the fact that no books of accounts were maintained by the assessee for this business activity. In some other cases, the additions were deleted in a summary manner solely on the ground that opportunity of cross examination was not given to the assessee. The CIT (Appeals) could have given the opportunity of cross examination to the assessee rather than summarily deleting the additions in such cases since it has been held by Hon'ble Apex Court in a number of cases that the scope of power of CIT (Appeals) is coterminous with that of the Assessing Officer.

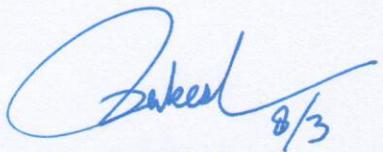

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5. In one case it was found during vigilance inspection that the CIT (Appeals) had not been passing the appellate orders but was showing disposal in statistical statements on a regular basis. This was not noticed by the Chief Commissioner of Income Tax who was supposed to inspect the work done by the CIT (Appeals). Such a situation would not have arisen if the Chief Commissioner of Income Tax concerned had conducted inspection of the CIT (Appeals) as mandated by CBDT Instruction No. 16/2008 dated 04.11.2008.

6. In view of discussion in the preceding paragraphs, it is once again reiterated that the CIT (Appeals) should abide by the instructions of CBDT regarding timely issue and dispatch of appellate orders in letter and spirit. It is also important to note that the Apex Court has held that CIT (Appeals) has plenary powers in disposing of an appeal. These powers must be used by CIT (Appeals) judiciously while passing appellate orders.

7. The Chief Commissioners of Income Tax should keep in mind that in the matters of corruption, unless otherwise evidenced, the vicarious liability of a supervisory officer can become absolute, if the supervisor who has the right, ability or duty to control the activities of a subordinate does not take steps to prevent the acts of misdemeanor by the subordinate. Failure of the Chief Commissioners of Income Tax to conduct regular inspections of the CIT (Appeals) working under them or failure to keep a watch on the quality and quantity of orders would be viewed adversely by the CBDT.

8. This issues with the approval of Chairman, CBDT.


(Rakesh Gupta)
ADG (V) HQ-I, CBDT
New Delhi

To,

**All Pr. Chief Commissioners of Income Tax;
All Chief Commissioners of Income Tax; and
All Commissioners of Income Tax (Appeals)**