

Influential Aspects of Representation

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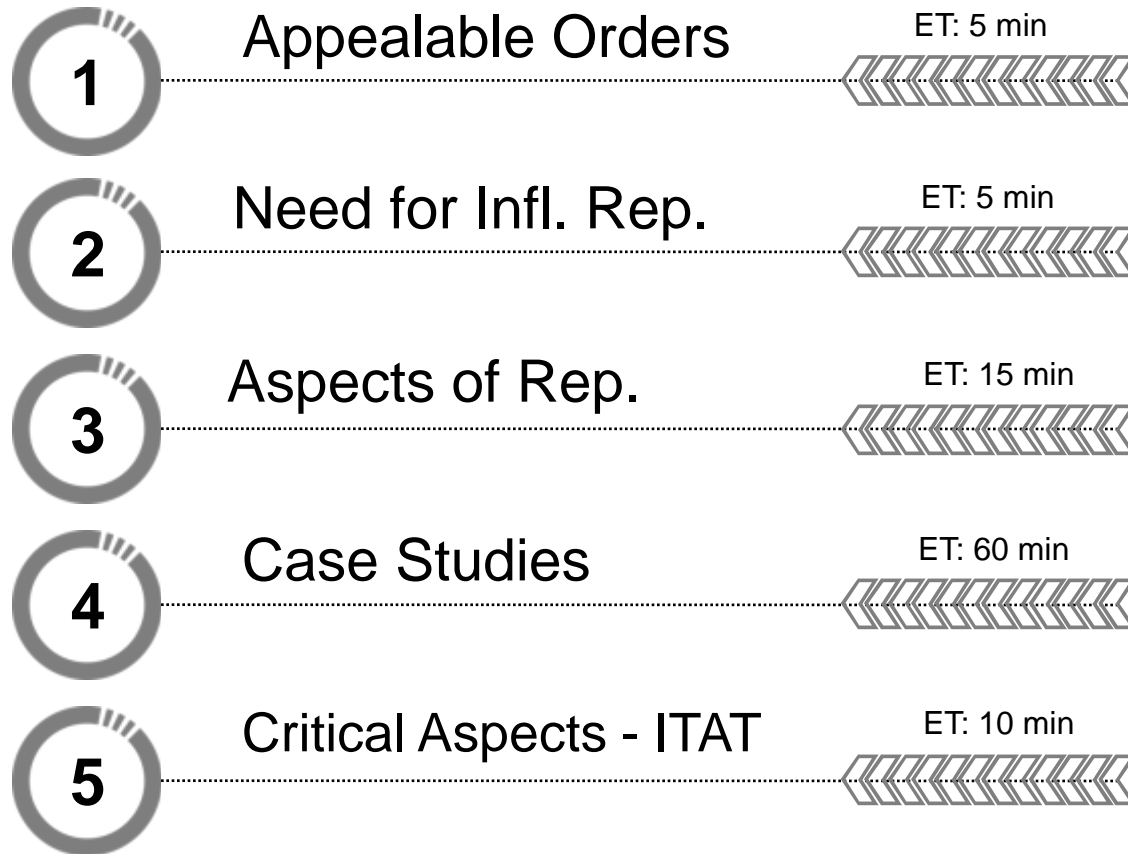


Objective

“Study about the influential factors which are significant in preparing submission and representation before appellant authority. The presenter believes it to be critical in current scenario where there are high pitch assessment to achieve collection targets and increasing remand of matters”



Road Map



Appealable Orders

CIT (A)

143(3) - Regular scrutiny
147 - Reassessment
154 - Rectification
201 /206C for non-
deduction/ collection of
Tax
237 – Refund order
Penalty orders
195(2)/248 –
Determination- rate of tax

CIT

Revision
application u/s 264

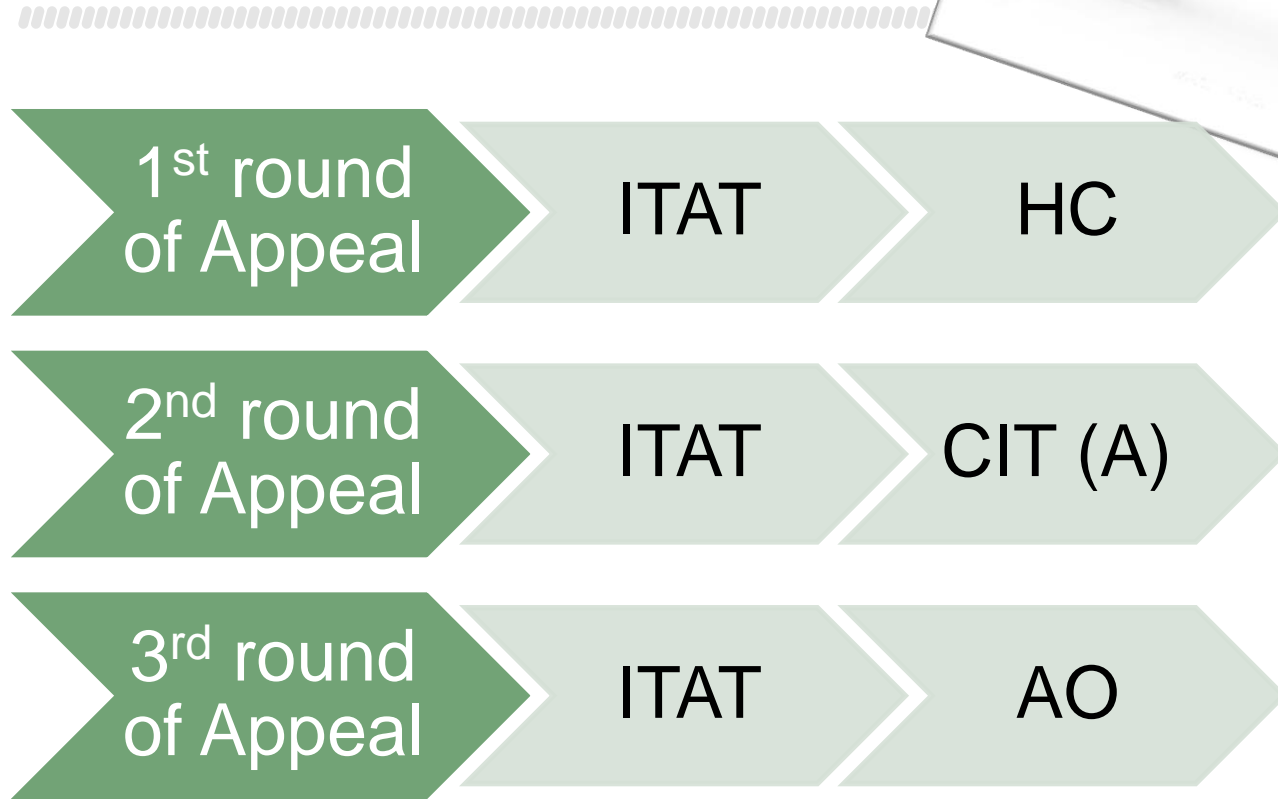
ITAT

144C – DRP order
Order by CIT
- 12AA
- 263
- 272A
Orders of CIT (A)

HC

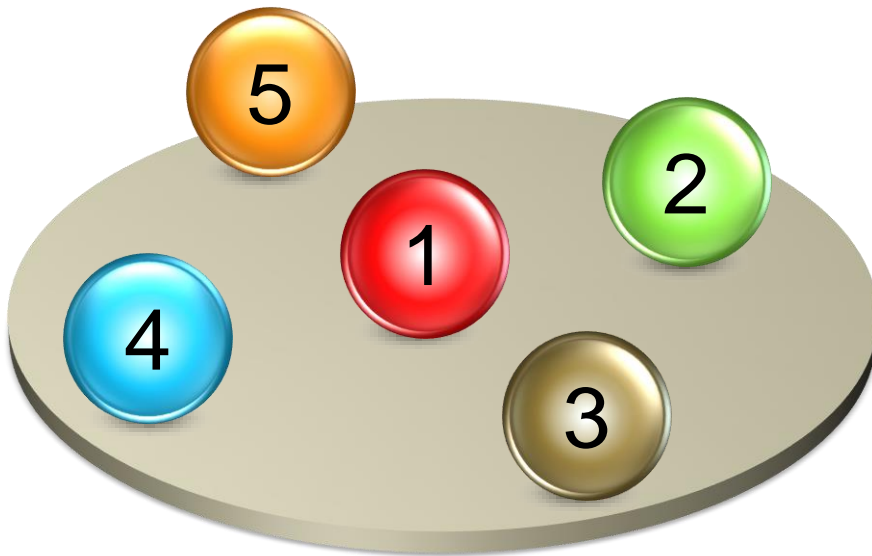
Orders passed by
ITAT involving
question of law
Writ petition for
orders in-terlia
including orders u/s
264 /197/195(3)

Need for influential Representation

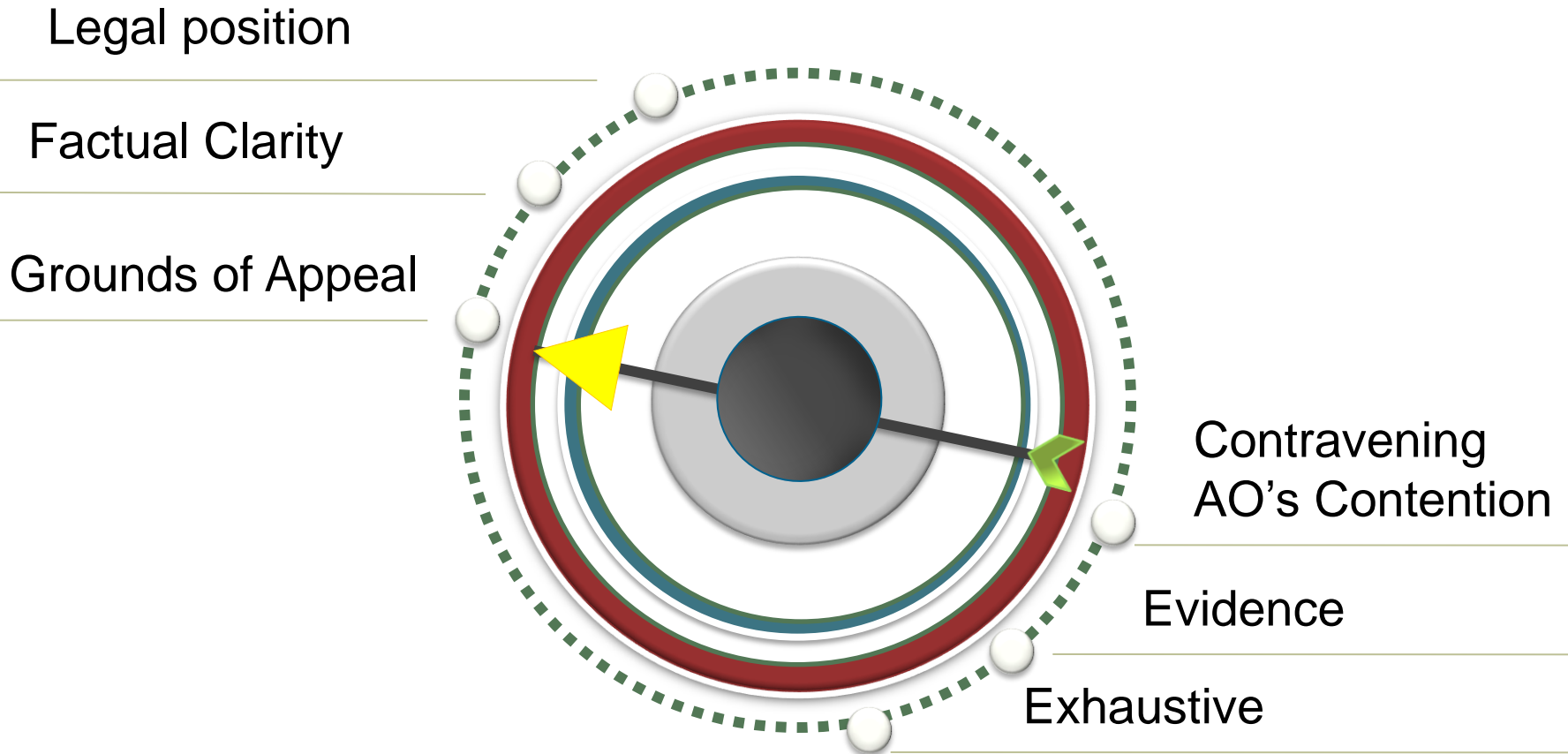


Consequences

1. Enforcement of Demand
2. Penalty Proceedings
3. Interest Liability
4. Contingent Liability
5. High Litigation Cost



6 aspects of the Representation



Aspects of the Representation

Grounds of Appeal

Grounds of appeal should be specific & exhaustive

- Additional ground can be raised during proceedings
- any fresh grounds not raised before CIT(A) may not be entertained by ITAT if it amounts to fresh investigation

Factual Clarity

- Present factual position after In-depth study of facts of the case
- Consistency in facts before AO & appellant or Reasons for contradiction
- Contravening facts given by AO with supportive evidence
- Reliance on documents submitted before AO - vital role

Aspects of the Representation

Legal Position

- Quoting specific and recent case law
- Contravening legal position quoted by AO in his order
- Contending case laws which are against assessee

Contravening AO's Contention

- Identify precise reason for disallowance
- Contravening reasons given by AO base on facts and legal position

Aspects of the Representation

Exhaustive

- Vigorous submission - Technical & Merits
- Leaving no room for CIT (A)

Evidence

Supportive documents strengthening the case

- Co-relate docs supporting the facts
- Authenticity of documents
- Additional evidence

Right to obtain information

- To inspect & obtain documents available with department related to case
- To cross verify statement made by third party

Case Studies



Case Studies

CG Vs BI

Hawala Transaction

Interest Disallowance

***“Burning
Issues”***



Capital Gain vs Buss. Income

Facts of the Case:

“Mr. A” into trading business; also appointed PMS for undertaking trading transaction. There sequence of share transaction is tabulated below

	INR in crores
Business Loss	0.28
Capital Gain	3.20
Total vol of purchase & sale	10
Total no. of script transacted	55
Total % of investment in top Ten Script (%)	50
Average period of holding (in days)	363 – 4000
Speculation transaction	F&O
No of recurring scripts transacted	32

Whether profit/loss is “Business income” or “Capital Gain”

Contention of AO

Considered transaction held for less than 30 days as business income & above as Capital Gain

Submission before CIT

- Motive behind share transaction – earn appreciation by retaining share or earn profit by realizing it
- Frequency of purchase and sale of particular script
- Holding period – high transaction & low holding is trade & high holding low transaction indicate investment
- % of long term assets and % short term assets in overall portfolio
- Number of scripts – level of diversification in portfolio
- Sources of funds
- Treatment in books of accounts – Stock in trade or investment

Decisions

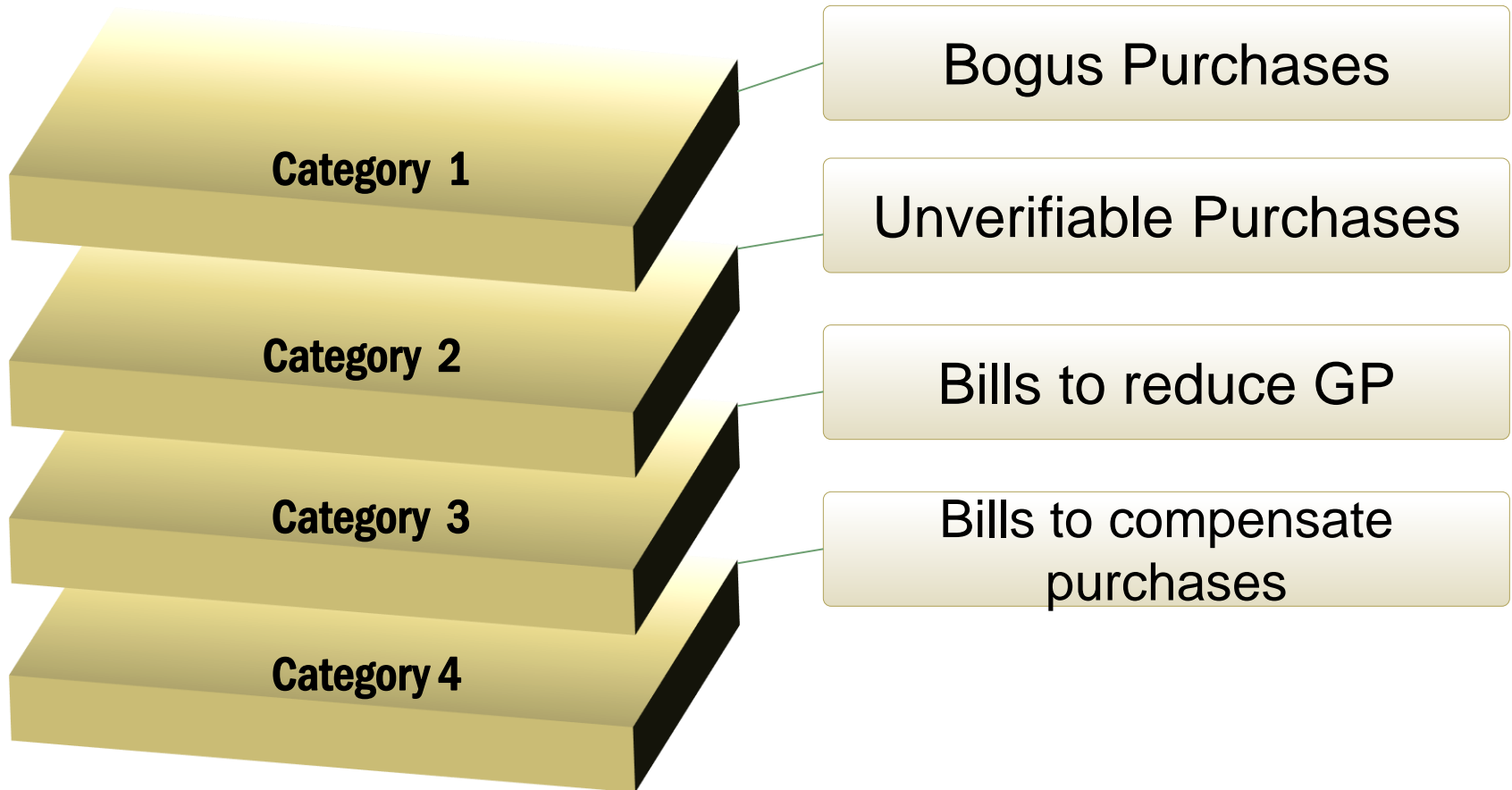
GOPAL PUROHIT – 29 SOT 117

the stakes are high and nobody wants to loose money as there are great chances of **capital** loss in respect of shares as compared to fixed earning securities where the principal money remains secured and also everyone wants to maximize wealth and minimize risk, hence, a person investing in shares is bound to study to keep a track of the developments; he may have assistance of the financial planner or investment consultant. **Employment of such infrastructure cannot turn an investment activity into a business activity.**

HITESH SATISHCHANDRA DOSHI – 46 SOT 336

It is an accepted fact and practice that in order to reduce the risk of loss of capital or income, the investor may try to diversify the investment—Thus, reshuffling of portfolios in a short period is not necessarily an activity of trading when the intention is to reduce the risk of loss of capital

Hawala Transaction



Checklist

- ✓ Whether sale is questioned
- ✓ Whether Stock register is reconciling
- ✓ Developing strong supportive documents
 - Gate pass/Inward entry
 - Delivery challan
 - Affidavits/ Confirmation from vendor
 - Contact details of vendor
 - Weighing slips /Packing slips
- ✓ Payment of brokerage charges

Checklist

- ✓ Comparison of GP/COGS/NP ratio
- ✓ Whether disallowance results to absurd ratios
- ✓ Transactions with vendor accepted in previous years
- ✓ Whether manufacturing process govern by industry norms
- ✓ Whether payments are made by cheque & Payment pattern
- ✓ Whether unsold Hawala purchases lying in closing stock
- ✓ Whether there are regular external/government audits

Unverifiable purchases - Decisions

KANCHWALA GEMS 122 TTJ (Jp) 854

the AO not justified in doubting the genuineness of purchases merely because parties were not found on the given addresses; and

Supplier had stated that they were only issuing bills without supplying the goods or that the money paid by the assessee against the purchases was withdrawn by those parties.

Undisputedly, after completion of transaction a purchaser cannot have any control over the suppliers and suppliers are always at liberty to use the money paid to them

PERMANAND 107 TTJ (Jd) 395

The assessee did pay for the **purchases**, he made from the two parties, through cheque. The statements or even the affidavits of the sellers cannot be utilized against the assessee. Admittedly, no opportunity was given to the assessee to confront the sellers. The assessee has discharged the primary onus cast on him by s. 69 by showing the **purchases**

G P Adjustments - Decisions

BHOLANATH POLY FAB PVT.LTD 355 ITR 290

Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal examined the evidence on record and concluded that the assessee did purchase the cloth and sell finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax

SIMIT P SHETH 356 ITR 451

when as a trader in steel sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income

Reopening of Assessment

Technical factors to be considered in reopened cases

- Return filed in response to notice 148 - Disclosure of additional income in return expose to penalty consequences
- Reasons for reopening to be obtained from AO
- Right of company to object reopening & AO to pass speaking order
- Presence of strong reasons to believe that income has escaped assessment is significant
- Reopening of assessment after four years – impermissible in case of full and true disclosure

Stay Petition

- Application before AO/ADIT/CIT – in case appeal is pending before 1st Appellant stage
- Application before Tribunal - in case appeal is pending before Tribunal
- Application before CIT(A)
Jagdish N. Hinduja v. CIT (2012) 210 Taxman 117 (Kar)
Until the application of the applicant for a stay is considered by the CIT(A), on merits and order is passed, the Revenue shall not precipitate the recovery proceedings

Stay Application - Decisions

KEC INTERNATIONAL LTD.- Direction to authority for stay petition

- at least briefly set out the facts of case before rejecting stay
- Speaking order for rejecting unconditional stay
- Indicate financial stability

RPG ENTERPRISES LTD. v. DY. CIT [2001] 251 ITR (AT) 20 (Mum.)

Assessing Officer (AO) is precluded from taking coercive action for the recovery of the disputed demand until the expiry of the period of limitation allowed for filing of the appeal against the decision of the first appellate authority and also during the pendency of stay application before any revenue authority or the Tribunal

- **Debasish Moulik v. Dy. CIT [1998] 231 ITR 737 (Cal.)**
- **Prem Prakash Tripathi v. CIT [1994] 75 Taxman 107 (All.)**
- **Smita Agarwal (Ind.) v. aCIT [2009] 184 Taxman 59 (All.)**

Stay Application - Decisions

CBDT's Instruction No. 1914, dated 2-12-1993

- if the demand relates to issues already decided in assessee's favour by an appellate authority or court earlier ; or
- if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of Law in respect of which there existed conflicting decisions of one or more High Courts
- if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment

CBDT's Instruction No. 96 [F.No. 1/6/69-ITCC], dated 21-8-1969

"Income determined on assessment was substantially higher than returned income – Whether collection of tax in dispute is to be held in abeyance till decision on appeal.

Disallowance of Interest as capital expense

Facts of the Case:

Extract of Balance-sheet of Co "A" is tabulated below

Particulars	2014 (Rs. In Crores)	2013 (Rs. In Crores)
Own funds	13.71	13.68
Borrowed funds		
- Specific Purpose	3.45	2.61
- Working Capital	24.96	35.43
Interest Free funds	2.00	-
Depreciation	0.35	0.29
Capital WIP (Sep 2013)	2.00	-
Finance Cost		
- Specific purpose	2.93	1.82
- Working Capital	1.13	0.59

Contention of AO

Proportionate Finance cost of Rs. 20.00 lacs is disallowed

Submission before CIT

Submission before CIT

- Cash flow statement showing cash surplus used for Capital WIP
- Ledger account of borrowed funds including overdraft account
- Month-wise summary of capital WIP
- Statement stating own funds are used for purpose of capital WIP

Order of CIT

Finance cost of Rs. 20.00 lacs not allowed as funds used for set up of new unit

Submission before CIT

- Nature of Capital WIP
- Establishing nexus between own funds Vs funds utilized for Capital WIP

Alternatively

- Establishing the fact that Rs. 3.45 cr is for specific purpose other than Capital WIP
- Capital WIP is incurred from common Funds where 35% is interest free funds
- No specific finding of AO that borrowed funds is used for Capital WIP
- Interest disallowance restricted to interest paid post Sep 2013 on common fund

Decisions

METRO INSTITUTE OF MEDICAL SCIENCES 36CCH 352

The presumption in case term loans granted by bank should be utilized only for the purpose for which they have been granted. AO should have evidence or material on record to hold otherwise.

Hind INDUSTRIES LTD. (2013) 35 CCH 415

“Where sufficient interest free funds are available with assessee no disallowance can be made u/s 14A vis a vis interest expenses.”

RAGHUVIR SYNTHETICS LTD.(2013) 354 ITR 222

Factually, it found huge funds were available without any interest liability with the assessee and that there was no evidence to hold that the borrowed money was utilized for the purpose of advance to the sister concern nothing contrary that could be brought on record by the Department for it to hold otherwise. Therefore disallowance to be deleted

Critical Aspects of Appeal - ITAT



Appeal before ITAT

- Grounds of appeal should be specific & exhaustive
- Final fact finding authority
- Paper-book covering only specific documents – should be submitted before lower authority
- Additional evidence accepted
- Contention precisely contravening reasons for disallowance by lower authority
- Important that issue raised before ITAT is dealt with by lower authority
- Preliminary discharge of onus and absence of strong finding by revenue builds good case
- Rule of consistency generally accepted
- Powers to review the order but not to enhance the demand



**Any questions
around this topic?**

Thank You

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