

SECTION 261 OF THE INCOME-TAX ACT, 1961 - SUPREME COURT - APPEALS TO - INSTRUCTION REGARDING STANDARD OPERATING PROCEDURE FOR APPEALS/SLPS FILED BY THE ASSESSEES IN THE SUPREME COURT AND RELATED MATTERS

INSTRUCTION NO. 8/2013 [F NO. 279/MISC./M-33/2013-ITJ], DATED 16-7-2013

[Instruction No. 4 of 2011 dated 9th March 2011](#) of CBDT laying down the Standard Operating procedure on filing of appeals/SLPs by the Income Tax Department contains, inter-alia, the procedure to be followed in the case of SLPs filed by the taxpayers at paragraph 6. Further, reference may be made to the letter of DGIT(L&R) F. No. DGIT(L&R)/FM meeting/2012-13 dt. 11-2-2013 regarding drafting of SLP and framing of proper substantial question of law. Reference may also be made to the letter dt. 16-4-2013 of the CIT (A&J) to all CCsIT(CCA) on the issue of managing litigation in Supreme Court and High Courts wherein it was instructed that same procedure as provided by above for the SLPs / appeals of the department should be followed for all SLPs / appeals filed by the assesseees.

A video conference was held by the Member (A&J) with all CCsIT(CCA) and feedback was taken about current practices adopted in the field for attending to SLPs/appeals filed by the assessee. Based on the feedback gathered and with a view to providing effective and uniform approach for handling of SLPs/appeals filed by the assessee, following instructions are issued.

2. Institutional mechanism for filing of Caveat/Counter Affidavit in SLPs filed against the Department:

I. Filing of Caveat

- (i) After the pronouncement of order by High Court and on receipt of the order, the CIT will examine the order and will decide whether caveat is to be filed before the Supreme Court to ensure that the SLP is not admitted without hearing the Department and that no interim order against the Department is passed *ex parte*. If it is decided to file caveat, CIT will send a proposal (containing detailed reasoning) to the DIT (L&R) seeking filing of caveat. For this purpose the CIT will also send a copy of order of High Court and vakalatnama in favour of advocate on record (AoR) with the proposal.
- (ii) Where it is decided not to file a caveat, the CIT will record in writing in the judicial folder why the filing of caveat was not considered necessary.
- (iii) If the CAS has obtained copy of SLP filed by the taxpayer, timeline for preparation of counter affidavit will immediately start and counter affidavit would have to be prepared and filed before the Supreme Court as per the timeline provided in Annexure-A suitably modified.
- (iv) All CsIT are required to forward a list of cases pertaining to their jurisdiction as decided by the High Court in favour of the department during the month to the DGIT(L&R), by the 7th of the following month. The list to be forwarded shall contain the details regarding ITA/ITR Number, Name & Address of Assessee, Assessment Year, CIT Charge and Appeal filed by Assessee or Department.

II. Observing Cause list of Supreme Court

- (i) Once the High Court has pronounced the judgment, the DGIT(L&R) shall observe the cause-list/advance cause-list of Supreme Court (SC)

on the website-www.supremecourtfindia.nic.in with a view to watching fixation for hearing of any SLP filed against the order of High Court and inform the CIT concerned.

- (ii) At the preliminary stage, except where a caveat has been filed, the Supreme Court hears the appellant only and decides whether the SLP is to be admitted not. In case of SLP being dismissed, no further action is called for. Even though the Supreme Court may admit SLP without giving any opportunity to the opposite party, however, the general practice is that if the Supreme Court is of the view that SLP needs to be admitted, it directs issue of notice to the Department and subsequent fixation for hearing. Record of proceedings of hearing in Supreme Court is posted on the abovementioned website on the following day after hearing from which it could be verified whether the preliminary hearing of SLP resulted into its dismissal or further fixation for admission purpose. If the SLP is directed to be fixed for admission purpose, the CIT shall send vakalatnama in favour of Advocate on record (AoR) to DIT (L&R) for obtaining copy of SLP and other documents.

III. Receipt of notice

If the CIT receiving the notice issued by the Registry of the Supreme Court, directly or through assessee, does not have jurisdiction over the case, he shall forward the notice to the jurisdictional CIT immediately under intimation to the DIT (L&R). If the vakalatnama in favour of AoR has not yet been sent, it shall be sent to the DIT (L&R) for obtaining copy of SLP and other documents.

IV. Preparation of Counter Affidavit

DIT (L&R) shall forward the vakalatnama to AoR in Central Agency Section (CAS) with a request to obtain the copy of SLP and other documents. DIT (L&R) shall send the copy of SLP & other documents as received from AoR to CIT for furnishing para-wise comments on SLP. The CIT shall prepare and forward the para-wise comments on SLP along with the copy of notice and paper book, if any, received from the registry of Supreme Court, to DIT (L&R) for preparation of Counter Affidavit by AoR. The DIT (L&R) shall provide these papers to AoR in CAS and shall obtain draft Counter Affidavit as prepared by AoR.

V. Vetting and filing of Counter Affidavit

Draft Counter Affidavit as received from CAS shall be forwarded by DIT (L&R) to the CIT for vetting. The CIT shall vet the counter affidavit and send it to the DIT (L&R) along with the corrections suggested, if any. The DIT (L&R) shall send the vetted draft along with the corrections to AoR for preparation of final Counter Affidavit. Counter Affidavit, as prepared by CAS, shall be forwarded by the DIT (L&R) to the CIT for signature. In case, CIT suggests any further changes to the draft counter affidavit, above procedure will be followed until the Counter Affidavit is prepared to the satisfaction of CIT. The CIT shall sign the final Counter Affidavit and send it to the DIT (L&R) for onward transmission to CAS for filing before the Supreme Court.

VI. Monitoring of the SLP/Appeal coming up for hearing

After the Counter Affidavit has been filed, the CIT shall continue to watch the cause-list /advance cause-list for any SLP filed against the Department to come up for hearing for admission. Regarding the SLPs which have been admitted and converted into Civil/Criminal Appeals, the CIT shall also watch the cause list/advance cause list for such appeals to come up for regular hearing.

VII. Assistance to Law Officers/Appearing Counsels

- (i) The CIT shall ensure that the Law Officer/Appearing Counsel representing the case is briefed properly before the hearing for admission of SLP. Once the case appears in the advance list of hearing of cases on the Supreme Court website, the CIT shall prepare a 'brief about the facts of the case and other relevant factual/legal developments since the time of filing of the SLP by the assessee. A soft copy of 'Brief' shall

be provided to the DIT (L&R) by the CIT within 7 days of the case getting listed in the advance cause list. In all cases where the briefing/appearing counsel desires a personal briefing or the CIT is of the opinion, considering the importance/revenue potential of the case, that the Counsel should be briefed, the CIT or Addl. CIT concerned shall visit New Delhi to arrange for such a briefing. DIT (L&R) shall facilitate arranging of such briefing. Whenever any clarification/instruction is sought by the Law officer/ Appearing Counsel in a case, it must be provided by the CIT on priority.

- (ii) The above procedure for preparation of the brief and briefing of the law officer/appearing counsel shall also be followed where after the admission of SLP and conversion of it into a Civil/Criminal Appeal, such appeal comes up for hearing before the Supreme Court.
- (iii) While preparing the counter affidavit or brief, reliance may be placed on any decided cases or provisions of law in any Act. A paper book shall be prepared containing copies of all such decisions relied upon and provisions of law in any Act referred to. The paper book shall be page -numbered and case laws shall be organized proposition wise.

3. Compliance of directions of Hon'ble Supreme Court:

Directions issued by the Hon'ble Supreme Court must be complied with, within the time allowed. The CIT shall personally ensure compliance of directions relating to Dasti service, filing of counter or rejoinder affidavit or other directions, to avoid adverse observations.

4. Timelines for processing of Counter Affidavit to be filed in the Supreme Court:

With a view to ensuring timely filing of counter affidavits in matters of SLP filed by the assessee in the Supreme Court, the timelines for processing proposals at different levels are enclosed as per Annexure-A, for strict adherence by all concerned.

5. Responsibility to ensure timely processing of Counter Affidavit /other procedures:

The CCIT and CIT shall ensure timely processing of caveat application & counter affidavit and their submission to the DIT (L&R) as per the timelines given in Annexure A. Any deviation from the timelines will have to be duly explained and delay occurring without any reasonable cause or due to negligence would be viewed adversely.

6. The Instruction shall apply with immediate effect in respect of all appeals/SLP cases filed by the assessee.

Note 1: Reference to CCIT/CIT in this instruction includes DGIT/DIT wherever applicable and reference to DIT (L&R) means reference to Directorate of Income-tax (Legal & Research), Delhi

Note 2: Reports/communications of the CIT will be sent to the DIT (L&R) through CCIT concerned

ANNEXURE A

Timeline in case of SLP filed by the Assessee/taxpayer

In case of Special Leave Petition filed by the assessee/taxpayer against the judgment of High Court timeline for various stages of processing is given below:

S.No.	<i>Description of action points</i>	<i>No. of Days</i>	<i>Cumulative Days</i>
1.	Date of pronouncement of judgment by High Court	-	-
2.	CIT to examine the order of High Court and to decide whether Caveat is to be filed	5	5

3.	If Caveat is to be filed, CIT should send proposal to DIT(L & R) for filing of caveat	5	10
4.	DIT(L&R) to send proposal for filing of Caveat to CAS	3	13
5.	CAS to file Caveat and inform DIT(L&R)	3	16
6.	DIT(L&R) to inform CIT about caveat having been filed	3	19
7.	Watching of cause list/advance cause list of SC for SLP in the case to come up for hearing for admission (www.supremecourtfindia.nic.in) by the DGIT(L&R)	-	
8.	DGIT(L&R) to inform the CIT concerned within 2 days of the information being uploaded on the website		
9.	Usually where the SC is of tentative view that SLP may need to be admitted, SC issues notice to the Department	0	0
10.	CIT to send vakalatnama in favour of Advocate on record (AoR) to DIT (L&R)	2	2
11.	Transit of vakalatnama from DIT (L&R) to AoR in CAS with request to obtain copy of SLP & other documents	2	4
12.	Obtaining copy of SLP from AoR by DIT (L&R)	3	7
13.	Dispatch of copy of SLP & other documents to CIT by DIT (L&R)	2	9
14.	Furnishing of para-wise comments by CIT on the SLP to DIT(L&R)	7	16
15.	Transit of para-wise comments from DIT (L&R) to AoR	2	18
16.	Preparation of draft counter affidavit by AoR & dispatch to DIT (L&R)	7	25
17.	Sending Draft Counter Affidavit by DIT (L&R) to CIT for vetting	1	26
18.	Vetting of draft Counter affidavit by CIT and returning it to DIT (L&R)	2	28
19.	Transit of vetted counter affidavit to CAS by DIT (L&R)	1	29
20.	Preparation of counter affidavit by CAS & dispatch to DIT (L&R)	3	32
21.	Transit of counter affidavit by DIT (L&R) to CIT for signature	1	33
22.	Dispatch of signed counter affidavit by CIT to DIT (L&R)	2	35
23.	Transit of signed counter affidavit from DIT (L&R) to CAS	1	36
24.	CAS to file the counter affidavit	2	38
25.	DIT (L&R) to inform the CIT about filing of Counter Affidavit	2	40