

**FILING OF APPEALS ON MERITS - OBSERVATION OF COURTS - INSTRUCTIONS
TO IT DEPARTMENT TO ENSURE OPTIMAL UTILISATION OF AVAILABLE
RESOURCES TO OBTAIN MAXIMUM BENEFIT OUT OF LITIGATION**

LETTER D.O. No.279/M-88/2014-ITJ, DATED 3-7-2015

Reference the earlier D.O. dated 19th September, 2014 on the above subject.

2. It has been noted that despite several instructions on the subject, necessary due diligence and caution is not being exercised while granting authorization for filing of appeals. Several court decisions have been noted where courts have taken an adverse view against the Department. A few such decisions are:

- (i) ITAT, Mumbai in the case of *M/s Prescon Builders Pvt. Ltd.* has stated that the very fact that the AO filed the appeals without even verifying the year, which was mentioned in the ground of appeal, also indicated that the appeals were filed in a routine manner which causes lot of inconvenience to the taxpayers and such a practice should be deprecated.
- (ii) High Court, Mumbai, in the case of *CIT-2 v. State Bank of India, Financial Reporting, Compliance & Taxation Department* noted that where the Revenue has accepted the order by not preferring any Appeal against the earlier order, the Revenue should not challenge the subsequent order on the same issue. In case an appeal is preferred from the subsequent order, then the Memo of appeal must indicate the reasons as to why an appeal is being preferred in the later case when no appeal was preferred against the earlier order of the Tribunal which has merely been followed in the later case. The absence of this being indicative of non-application of mind, does undoubtedly give an opportunity to the Revenue to arbitrarily pick and choose the orders of the Tribunal which they would challenge in the Appeal before the Court.
- (iii) ITAT, Mumbai in the case of *Sh. S. Ganesh* has stated that the act of disregard and disobedience of the orders of the higher judicial authorities in hierarchy amounts to the gross abuse of process of law and is an act which tends to lower down the authority of the higher courts. In this case an appeal was filed on an issue settled by the ITAT in its earlier decision in the same case.

2.1 The apathy of the Department Officers is evident in another shocking incident where in a sensitive search case, appeal was filed by the Department in High Court. The Registry pointed out certain defects in filing of appeal and the Court granted time to remove the defects. This relates to the year 2009. From 2009 till 2014, no follow-up action was taken and the case was dismissed due to default on part of the Department in curing procedural defects. The Department filed a MA praying for restoration of the main appeal and subsequently a Review Petition which were dismissed by the Court. When the matter travelled to the Supreme Court, the Apex Court has taken a serious view and directed that Department ascertain and fix responsibility of the individual/(s) guilty of inaction and for taking appropriate action against

them for such inaction. This default was compounded by the fact that the SLP was filed after a delay of 240 days.

2.2 Needless to say that the Courts are taking a stern and inclement view as far as Department's actions in litigation matters is concerned.

3. Further, besides financial costs, litigation also entails tarnishing the image of the Department and straining its resources. The significance of filing appeal and pursuing litigation only in deserving cases cannot be over-emphasized, more so in the backdrop of the fact that Department is facing shortage of officers at all levels. It is imperative that the available resources are optimally utilised to obtain maximum benefit out of litigation.

4. This must be brought to the attention of all concerned for compliance. With regards.