

F.No.279/Misc./M-72/2022-ITJ

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

New Delhi the 15th December, 2022

To

All the Principal Chief Commissioners/Chief Commissioners of Income Tax
All the Principal Director Generals/Director Generals of Income Tax

Subject:- Standard operating procedure on filing of Appeals/Special leave petition (SLPs) by the Income Tax Department in the Supreme Court and related matters: instruction regarding.

Sir/Madam,

Several instructions and directions have been issued by the CBDT from time to time emphasizing upon the need for timely filing of appeals/SLPs in the Supreme Court and proper conduct of litigation. However, a number of SLPs are being filed with inordinate delay. In the wake of the Hon'ble Supreme Court's directions to adopt ICT (Information and Communication Technology) initiatives to streamline, monitor and provide seamless integration of all stages in government revenue litigation across the board, a LIMBS Committee and a High-Powered Committee were constituted. The High-Powered Committee has suggested to the board for changes in SLP proposal initiation, timely sending of SLP proposal to DoLA and use of single file instead of initiating fresh files through e-office by different authorities to cut down the delay. The High Powered Committee has advised the Board to work towards a "Zero Delay Regime" in the matter of filing of appeals/SLPs.

2. In view of the above and with a view to ensure filing of appeals/SLPs within the period prescribed, following instructions are issued in supersession of all earlier instructions on the subject.

Time Lines for processing of proposals for filing SLPs

3. With a view to ensure timely filing of appeals/SLPs in the Supreme Court, the timelines for processing proposals at different levels are modified and enclosed as per Annexure-A, for strict adherence by all concerned.

3.1 Responsibility to ensure timely processing of proposals - The Pr.CCIT/CCIT and Pr.CIT/CIT concerned shall ensure timely processing of proposals and their submission to the Directorate of L&R as per the timelines given in Annexure A. Any deviation from the timelines will have to be duly explained and delay without proper explanation or due to negligence will be viewed adversely.

4. Institutional mechanism for processing proposals for appeals/ SLPs to the Supreme Court:

- i. The Pr. CCIT/CCIT having jurisdiction over the station having Bench of the High Court, shall ensure a proper institutional mechanism for timely dissemination of downloaded copy/certified copy of High Court's order/judgment, whichever is available first, to Pr.CsIT/CsIT having jurisdiction over respective cases.
- ii. The Pr. CCIT/CCIT, shall set-up a High Court Cell at each station within their jurisdiction where a Bench of the High Court is situated. Such cell shall be headed by a DCIT/ACIT/ITO (as decided by the Pr. CCIT/CCIT, depending upon availability of manpower and the work load) with adequate number of Inspectors and other support staff and appropriate infrastructural facilities to make it properly functional. Appropriate monitoring and supervision mechanism of the High Court Cell shall be prescribed by the Pr. CCIT/CCIT under intimation to the Pr. DGIT (L&R).
- iii. The High Court Cell shall obtain particulars of cases finally heard from Standing Counsels at the end of each working day and intimate particulars of the cases, such as the name of the case, Assessment Year, Name of the Standing Counsel etc. with a summary of the proceedings to the Pr. CIT/CIT concerned without any delay. For outstation Pr. CsIT/ CsIT, such information shall be sent through e-mail/Fax.
- iv. The Cell shall also track orders/judgments pronounced on daily basis. Such information should be compiled from the daily cause list, Senior Standing Counsels and from Court room/registry of the High Court. The information so compiled should be transmitted to Pr. CIT/CIT concerned immediately on a regular basis through personal delivery/e-mail/fax.
- v. The Administrative Pr. CsIT/CsIT shall also set up proper institutional mechanism in their respective charges to access the website of the High Court to download orders/Judgments relating to their charge as soon as these are uploaded. The orders can be downloaded from websites such as www.indiancourts.nic.in or www.court.nic.in where link of all High Courts is provided. An officer of the charge should be nominated for this purpose. Such officer shall access the website everyday and keep a log of the same. The nominated officer shall also maintain regular co-ordination with the High Court Cell(s) dealing with the cases of the charge.

Processing of proposals for appeal/SLP on receipt of the order of High Court

5. The following important issues need to be noted in processing proposals for SLPs for due compliance:

- i. For filing SLP, period of limitation begins from the date of judgment/order of the High Court.
- ii. In case an application for grant of certificate of fitness u/s 261 of the Income-tax Act, 1961 is made, the limitation to file Civil Appeal/SLP is 60 days from disposal of the application.
- iii. The proposal for SLP against the High Court's order shall be initiated on the basis of an ordinary copy/ the copy of the order downloaded from the website (as referred to above) of the Court without waiting for the certified copy of the order. The certified copy of the order shall be sent separately as soon as it is received to determine the exact date of limitation. The timeline for processing the SLP proposal at the level of Pr.CIT concerned, shall not in any case, exceed 20 days from the date of judgment.
- iv. In order to avoid delay, the Pr.CCIT/Pr.CsIT should consider the SLP proposals as per their judicial appreciation of the impugned order/judgment of the High Court and need not seek legal opinion in every case from the Standing Counsels as the Ministry of Law & Justice and Ld. Law officers of the Government of India are consulted in appropriate cases before filing the SLPs.
- v. The process of filing SLP proposal should invariably be initiated only at the level of jurisdictional Principal Commissioner/ Commissioner in the field. Pr.CIT/CIT is the custodian of all the records while litigation in High Court is on and is responsible for initiating the process for filing of SLP.
- vi. After due consideration, the proposal for SLP must be sent by the Pr. CsIT/CsIT to the Directorate of Income-tax (L&R) within the time-limits prescribed in Annexure-A. In case of delay, detailed justification should be furnished along with the corrective action taken to prevent recurrence of delay in future.
- vii. The revised Proforma B, enclosed as Annexure B to this instruction, duly filled-in along with one set of required documents annexed to it, should be sent with the proposal. The proposal along with soft copy of all annexures is to be sent to the Directorate of L&R necessarily through email / e-office.

SLP filed by the assessee

6. If the Hon'ble Supreme Court directs issue of notice on the SLP filed by the assessee, Registry of the Supreme Court serves the notice along with the Special Leave Petition to the respondent Pr.CIT/CIT or other respondent officer directly. The Pr.CIT/CIT or such other respondent officer, through his Pr.CIT/CIT, should submit the following documents to the Directorate of Income-tax (L&R) for entering appearance before the Hon'ble Court and for filing counter affidavit:

- i. A copy of the notice along with the paper book served by the Registry.
- ii. Para wise comments on the Special Leave Petition placed in the paper book.
- iii. A Vakalatnama duly executed in favour of Assistant Government Advocate, Central Agency Section, Ministry of Law.

The aforesaid documents should be submitted strictly within three weeks from the receipt of the notice to the Directorates of Legal and Research.

Processing of SLP proposals in the Directorate of L&R

7. The Pr. DGIT (L&R) shall ensure the following:
 - i. After due consideration of the proposal within the Directorate of L&R, the proposal is sent to the Ministry of Law within 20 days of the receipt, if approved by the Board and;
 - ii. Time-lines mentioned in the Annexure-A to this Instruction for timely filing of SLPs are adhered to strictly.

Compliance of directions of Hon'ble Supreme Court

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

Quality of SLP Proposals

9.1 The quality of proposal sent by the Pr.CIT/CIT is extremely important for efficient and effective litigation management in the Department. The Pr.CIT/CIT must ensure that the complete proforma B along with all requisite documents is submitted along with the SLP proposal. Any deficiency in this regard causes avoidable delays in processing of the proposals.

9.2 It must also be noted that appeal to the High Court and the Supreme Court can be filed only on 'Substantial Questions of Law'. It has, however, been observed that many SLP proposals involve only 'questions of fact'. The CCsIT shall ensure that the proposals for SLPs are well examined and forwarded to the Directorate of L&R only in those cases where 'substantial questions of law' are involved.

9.3 All High Court orders which are against the revenue but found acceptable by the Pr. Commissioner/Commissioner will be put up to the jurisdictional Chief Commissioner within 15 days of pronouncement of the judgment for his concurrence. In case, the CCIT directs submission of SLP proposal in a case, the same shall be done within time frame prescribed in Annexure A.

Assistance to Law officers/Appearing Counsels

10. The Pr. CIT/CIT concerned should ensure that the Law Officer/Appearing Counsel representing the case is briefed properly before the hearing. Whenever, Law officer/Appearing Counsel seek instructions/clarifications in a case, the same must be provided by the Pr.CIT/CIT on priority.

Monitoring Compliance of this Instruction

11.1 The Pr. DGIT (L&R) shall monitor the compliance of time lines for submission of SLP proposals and send a quarterly report to the Member (A&J), CBDT giving list of cases where the proposal for filing SLP was received beyond the prescribed time lines. Due dates of the quarterly reports are - 15th July, 15th October, 15th January and 15th April. The report shall indicate the Pr.CCIT/CCIT region, the Pr.CIT/CIT charge and number of days of delay along with the action taken and/or proposed to be taken.

11.2 In the quarterly report, the Pr. DGIT (L&R) shall also report cases of delays beyond the prescribed time lines for:

- i. Sending the SLP to Ministry of Law;
- ii. Vetting of draft SLP; and
- iii. Filing of SLP by the CAS after vetting.

Reasons of delay in such matters and the steps taken/proposed to be taken shall also be mentioned in the report. Delays, if any, on the part of counsels and CAS etc. shall be brought out clearly to be taken up with the Law Ministry appropriately.

12. This Instruction shall apply in respect of the orders/judgments of High Courts pronounced on or after the date of issue of this Instruction. Necessary concurrence of Ministry of Law & Justice has been obtained.

Note: Reference to Pr.CIT/CIT/Pr.CCIT/CCIT in this instruction includes Pr.DIT/DIT/Pr.DGIT/DGIT wherever applicable.

Yours faithfully,



(Tanay Sharma)

DCIT(OSD)(ITJ)-I, CBDT

Copy to:

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. The Comptroller and Auditor General of India.
3. DIT(Vigilance), Mayur Bhawan, New Delhi.
4. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
5. All Directors of Income-tax, New Delhi and DGIT(NADT), Nagpur
7. Database Cell for uploading on www.irs.officersonline.gov.in
-Shant

(Tanay Sharma)

DCIT(OSD)(ITJ)-I, CBDT

ANNEXURE - A
Timelines for filing SLP to Supreme Court

The Special Leave Petition against the judgment of High Court has to be filed in Supreme Court within 90 days of date of pronouncement of the order. The timeline will start from the date of judgment. Timelines for various stages of the process are given below:

I. TimeLine to be observed in the office of the Pr.CIT/CIT:

S. No		No. of Days	Cumulative Days
1.	Scrutiny of the judgment by the Pr.CIT/CIT to take a view to contest or accept the same	15	15
2.	CCIT's view & specific comment	2	17
3.	Preparation of proposal with annexure ++	2	19
4.	Transit to Directorate of Income tax (L&R)	1	20

++ : This activity should begin as soon as Pr.CIT/CIT takes a view to propose SLP.

Timeline to be observed in the Directorate of Income Tax (L&R)

S. No		No. of Days	Cumulative Days
1.	Directorate of Income Tax (L&R)	16	36
2.	Member (A&J)	3	39
3.	Transit to MOL	1	40

II. Time line to be observed in the Ministry of Law/Central Agency Section (Internal breakup of the timelines may be decided by DoLA/ld. ASG)

Sl. No		No. of Days	Cumulative Days
1.	Analysis by DoLA, Opinion of Law	30	70

	officer and drafting of SLP		
2.	Transit to the Directorate	1	71
3.	Vetting in Directorate	7	78
4.	Transit back to CAS	1	79
5.	Paper book preparation, Affidavit/AOR, Filing of SLP	6	85

The observance of timeline in the MOL and CAS will be monitored by the Ministry of Law other than step at Sl. No. 3 above which relates to the Directorate (L&R).

Revised Proforma for submission of proposal to file SLP

PROFORMA: B

1.	(a) ITA No./WP No. of the Judgment	
	(b) Unique 16 digit 'Case Number Record' (CNR) No.	
	(c) High Court LIMBS ID	
2.	Whether there are multiple appeals involved in the order of High Court.	Y/N
	If yes: -	
	(a) No. of appeals involved in the composite order of High Court	
	(b) Whether SLP is proposed against all the appeals involved	Y/N
	(c) If no, reason for not proposing SLP against all the appeals involved	
3.	i. Name of the assessee	
	ii. Address of the assessee	
4.	(a) Assessment Year ¹	
	(b) Income declared by the assessee in ITR	
	(c) Income assessed u/s 143(3)/147/153(A)/153C	
5.	(a) Aggregate of Tax effect on issues to be disputed.	
	(b) Tax effect Issue wise involved in the SLP proposal.	
6.	Is the Tax effect below the limits prescribed in instruction on monetary limits for filling SLP? If yes, please specify the exception provided in the instruction in which	

¹ Separate Proforma 'B' to be filed for each Assessment Year

	the proposal is covered.	
	(a) Details of exception clause	
	(b) In case of Audit Objection, whether the same has been accepted or not by the department (including relevant documents)	
	(c) Confirmation that CBDT Instruction No. 07/2017 related to Revenue Audit Objection has been adhered	
7.	i. Date of High Court order	
	ii. Date of Limitation for filing SLP	
	iii. If proposal to Directorate of Income-tax (L&R) is sent beyond 20 days from the date of order, reasons for delay.	
8.	(a) Are the following documents, in one set of hard copy, enclosed	
	i. Certified copy of High Court's judgment /order	Y/N
	ii. Copy of memo of appeal u/s 260A filed before the High Court	Y/N
	iii. Copy of order of ITAT	Y/N
	iv. Copy of the order of CIT(A)	Y/N
	v. Copy of the Assessment Order/s	Y/N
	vi. In case of reopening u/s 148 copy of notice, copy of reason recorded and approval of PCIT, objection filed by assessee and reply of the objection.	
	vii. if, any documents are relied upon/referred into for proposing SLP, copy of the same	
	viii. (a) Any other relevant documents	
	(b) The soft copy of the documents is sent on e-office as well as through email.	Y/N
9.	(i) Facts of the case in brief (in about 300 words):	In the separate sheet

(ii). Information regarding SQsL before the High Court.						
Sr. No.	Substantial Question of Law(SQL) raised before the High Court	Decision of High Court on the SQL (held in favour or against the Revenue)	Relevant Para of the High Court order	Whether the SQL is sought to be agitated before the Supreme Court (Yes/No)	Remarks, if any	
1.						
2.						
...						
(iii) Whether all the question of law (QoL) raised before High Court have been answered in the order of High Court. If no proposed action for the same.						
(iv) Whether the issue of perversity has been taken as a ground before ITAT/HC. If yes please indicate the relevant para of the order of CIT(A)/ITAT/HC.						
(v) If the disputed issue under consideration is involved in other assessment years, then assessment year wise status of litigation in all such appeals						
10.	The 'Substantial Questions of Law to be proposed in the SLP'					
11.	(a) If the judgment, to be contested, has relied upon another judgment, then a copy of the relied upon judgment & its present status of litigation, if ascertained.					
	(b) Has the relied upon judgment been accepted on merits or has not been accepted but not contested further on account of tax effect being less than the limit prescribed by the Board.					
	<i>[The information relating to status of the relied upon judgment as indicated in (a) & (b) may be mentioned in the note to be enclosed as per Sl. No. 8(viii) above]</i>					
12.	(i) Name and present communicable address of all the respondents against whom SLP is sought to be filed					
	(ii) E-mail addresses of all respondents					
13.	Communication details of PCIT/CIT					
	(i) Name					
	(ii) Telephone Number					
	(iii) Fax number					

	(iv) Mobile number	
	(v) Official E-mail id	
14.	Specific comments of the CCIT for recommending SLP to be separately enclosed with the proposal for consideration of Board.	

Date :

Signature

Place :

Name & designation of the PCIT/CIT

Notes:-

1. In case of writ petitions, copy of writ petition, copy of counter & rejoinder affidavits filed in the High Court and any other document crucial to the adjudication of issue.
2. The delay due to time taken in ascertaining the present status would be attributable to the PCIT/CIT forwarding proposal without the same as this is very crucial to proceed further.
3. The PCIT/CIT has to ensure that every page of the annexure is legible