

An aerial photograph of a large group of triathletes in black wetsuits and white swim caps swimming in turquoise water. A single kayaker in a bright pink kayak is positioned in the center of the group. The text is overlaid on a yellow trapezoidal background in the upper left corner.

WIRC of ICAI

Drafting of Income Tax Submissions

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Points to be considered for submissions before Income Tax Authorities:

- Written submission is part of the overall arguments of an assessee and therefore, it is extremely critical that the submission is properly drafted and filed with the Income Tax Authorities.
- Written submissions should always be filed by an assessee during the course of the hearing to put the facts on record and summarize the oral arguments made during the course of hearing.
- Even if assessee does not avail personal opportunity of being heard in the current e-assessment regime, it is always advisable to file a written submission.

The following are the general points to be considered while drafting the submission:

- The submission should always be initiated with facts available on record.
- No need to elaborate by repeating the points in the submissions.
- The submission should be concise with distinct heads.
- Arguments should be to the point i.e. specific to the query raised.
- Ensure that all the queries raised in the notice issued by the AO are replied to in the submission.

Points to be considered for submissions before Income Tax Authorities:

- The submission should be properly structured priority of argument should be considered and decided and accordingly serially numbered.
- Quote relevant case laws with citation supporting your contention.
- All the relevant evidences and documents should be filed along with the submission to substantiate the claim, to avoid any scenario where AO states that the assessee has not filed all documents and evidences on record.
- Ensure that any negative or against decision is distinguished to your facts of the case, rather than not bringing it in light of the authorities.
- Give adequate reference to the factual documents and legal decisions relied upon in the submission with proper page reference.
- Lengthy or very elaborative submissions should be avoided.
- However, if there are multiple issues and facts due to which submission is very long/detailed, it is suggested that a summarized brief note of the submission consisting of key arguments is also submitted alongwith the main submission.

Submissions for various proceedings

- **In case of normal assessment proceedings (section 143(3));**
 - Before the initiation of the assessment proceedings, the position taken in the return of income should be submitted with the AO by way of letter.
 - Ensure that all the factual details asked for by the AO has been submitted truly and fully in the submission and all the queries are replied.
 - The submission should be initiated with facts available on records.
 - If AO issues show cause notice on a particular issue, the submission should be crisp only on the issue for which notice is issued.
 - Support your facts with various judicial precedents and against decision if any quoted in the notice should be distinguished with the facts of the case
- **In case of reassessment proceedings(section 147);**
 - Initiate the submission by giving background and summary of original assessment proceedings and additions made in the original assessment proceedings.

Submissions for various proceedings

- Thereafter, prepare legal submissions on the validity of reassessment proceedings, i.e. whether objections have been disposed of by AO, on the validity of reasons for reopening, objections filed to re-opening, any new tangible material found etc.
- Also, on without prejudice. the submission should also consists on the merits of the case on how the disallowance made in re-assessment proceedings, is to be deleted and support it with legal arguments.
- **In case of proceedings initiated as a result of search/survey (Section 153A);**
 - Initiate your submission with background and original assessment proceedings and submit all factual details to support the claim.
 - Prepare legal submissions on validity of search/survey proceedings i.e. whether new incriminating material was found during the course of search/survey, validity of the statements taken on oath, documents collected or seized during the course of search/ survey etc.
 - Thereafter, on without prejudice basis, explain the merits of the case and support it with legal arguments as to why the addition made should be deleted.

Submissions for various proceedings

- **In case of penalty proceedings**
 - The submission should start challenging the basis/ reason on which penalty proceeding is initiated/ levied.
 - The second part of the submission should be mainly on various propositions with the help of facts of the case and on why penalty should not be levied.
 - Further, on without prejudice basis, make arguments on merits as to why the penalty levied is unwarranted in the your case, as the issue on merits will be deleted or is deleted by AO in quantum proceedings alongwith with judicial precedents
- **In case of TDS proceedings (200A proceedings);**
 - Generally the TDS notice are issued for short deduction, short payment, non deduction, non payment etc. In order to understand the default one needs to download the justification report which consist of all errors and one, should prepare the submission factually and legally
 - All the supporting documents substantiating the TDS deducted at lower rate should be submitted

Submissions for various proceedings

- **In case of other proceedings (Section 195, 197, 210 etc)**
 - The submission should start on the facts of the case and on issue in dispute/contested before such lower authorities.
 - Thereafter, submission should be on why the proceeding initiated should be dropped or quashed and should be in line with the basic structure as explained earlier.
 - Thereafter support should be made to the factual submission with judicial precedents.
- **In case of transfer pricing proceedings**
 - The submission should start with basic details as asked by the TPO and the reply to show cause notice should be crisp only the queries raised by TPO.
 - Further, emphasis on the submission should be mainly on the facts and applicable transfer pricing laws.
 - Submission should be substantiating the position adopted in Transfer pricing study report alongwith the subsequent legal position available at the time of the proceedings
 - Lastly, support should be made to the factual submission with judicial precedents.

Submissions before Income Tax Authorities

- **Do's**

- Always seek approval of client before filing the submission.
- Double check the facts with the client.
- Always prefer filing submissions on client letter head and signed by client.
- Prefer quoting recent case laws of higher authorities (SC/ jurisdictional HC)
- Challenge the proceedings on its validity on legal grounds and then move to arguments on merit.

- **Don'ts**

- Unnecessary arguments or narrations should be avoided.
- Repetition of issues and explanations.
- Quote too many case laws.
- Make aggressive remarks against the AO or the authorities.
- Never disclose any confidential information without approval of client in the submission

Representation before Income Tax Authorities

- **Dos**
 - Be courteous
 - Be fair
 - Be reasonable and brief
 - Avoid over-zealousness and misguided enthusiasm
 - Show due respect to the authorities.
 - Dress appropriately.
 - Assist the authorities by highlight against decision and distinguish your case
- **Don'ts**
 - Never collect or accept any document, notice or communication from the Department on behalf of the client.
 - Take unnecessary adjournments on frivolous basis.
 - Loose temper, just keep calm.
 - Be in a haste, go slowly and respectfully

Power of Attorney i.e. POA:

- **The POA is a very important document which needs to be carried for hearings.**
- **Dos**
 - It should be executed on stamp paper, according to the State Stamp Act (for eg: in Mumbai Rs 500/-).
 - Original copy of POA for each assessment year, even though appeal is combined.
 - POA to be signed by the person authorized to sign the appeal memo.
 - Valid approval should be given by the client appearing on behalf of it in the hearing
- **Don'ts**
 - Not to be executed on the letter head of Client.
 - Photo copy of POA is not sufficient.
 - Avoid including name of Advocates.

Filing of paper book before Income Tax Authorities

i. Dos

- ▶ Strategically decide on the documents to be submitted.
- ▶ Index of the contents and documents should be arranged ground wise in the submission.
- ▶ Documents to be serially numbered.
- ▶ Relevant portion in the document/ decision – highlighted/ marked.

ii. Don'ts

- ▶ Paper book without indexing, numbering, highlighting or marking.
- ▶ Delay in filing of Paper book as the consequence, would be adjournment of the hearing.
- ▶ Submitting unreadable / illegible copies of the documents.
- ▶ Filing of bulky paper book needs to be avoided. Only the relevant documents/ portion of documents needs to be submitted.

Appeal before Income Tax Authorities

Grounds of appeal

- Ensure that the grounds of appeal are to the point, crisp and serially numbered.
- One must also keep in mind that grounds must relate to the issue in the case without any narration or arguments.
- Normally, general ground to be taken (to enable to argue on any ground even though not taken specifically in the petition)
- To highlight separately Transfer Pricing issues & Corporate Tax issues.
- Avoid repetition and prayer at the end of each ground.

A photograph of a person holding a large, unfolded topographic map in a forest. The map shows green terrain with brown contour lines and a blue river. A large, bright yellow rectangular overlay covers the right side of the image, containing the text "Thank You!". In the foreground, there are several blue and pink bowls on a wooden surface. The background is a dense forest of tall evergreen trees under a clear blue sky.

Thank You!