

Appeal Remedy on Income Tax Assessment and Supreme Court Rulings

A presentation to the
Learned Government Attorneys
Kathmandu, Nepal

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Appeal Remedy on Income Tax Assessment and Supreme Court Rulings

- First Level Remedy – IRD (Review Petition)
- Second Level Remedy – Revenue Tribunal (Appeal)
- Third Level Remedy – Supreme Court (Appeal through Leave Petition)
- Writ Remedy
 - District Court – Injunction
 - Injunction and other writs
 - Supreme Court Court - writs

Appeal Remedy on Income Tax Assessment and Supreme Court Rulings (Cont.....)

- Remedy on Tax Settlement Commission Decision – Supreme Court (Leave Petition)
 - Only on fresh tax assessment
 - Not applicable to assessment based on negotiation
 - Not applicable to voluntary submission of pending cases at RT
 - Assessment for time barred for appeal
- Availability – taxpayer
- Grounds for leave – similar to RT decision
- Deposit for appeal – all of assessed tax and penalty; if TSC deems reasonable, allow half in cash and half in kind/personal guarantee

Review Petition - IRD

- 30 days to file petition; extendable by another 30 days
- Deposit – undisputed (all) and disputed (one third)
- 60 days time to decide; taxpayers have option to appeal
- Deemed rejection of petition through application

Appeal – Revenue Tribunal

- 35 days to appeal – only taxpayers
- Deposit – tax (half) and penalty (all)
- Preliminary hearing – notice to government attorney
- Authority to examine evidences
- Gives decision on facts and law

Appeal – Supreme Court

- Leave petition – available to both parties
- Time to file leave petition
 - 30 days; extendable by another 15 days (Sec. 205 of Civil Procedure (Code) Act; or
 - 45 days (Sec. 12 of Judicial Administration Act)
- Deposit – none
- Grounds – error of jurisdiction; error in procedure; error in evaluation of evidence; and gross error of law
- Gives decision on facts and law

Writ Jurisdiction

- Alternate remedy vs. writ
 - Equitable remedy
 - Ineffective remedy
 - Strict rule of remedy
 - Mixed judgements
- Current problems of writ
 - Media – issue about loss of revenue
 - Revenue Administration – faith on judiciary

Supreme Court Rulings on Jurisdiction and Deposit

- Alternate Remedy – some leading cases
 - Pradeep Kumar Agrawal (Reporting No. 6032)
 - Writ petition rejected.
 - Analyzed two previous rulings – Parsuram Jha and Ram Richhpal
 - 7 judges – 5 vs 2
 - Appeal is effective right.
 - Man Bahadur Sunar (Reporting No. 6984)
 - 9 judges
 - Analyzed two previous cases – Parsuram Jha and Pradeep Kumar Agrawal
 - Writ petition rejected.
 - Confirmed Pradeep Kumar Ruling.

Supreme Court Rulings on Jurisdiction and Deposit (Cont.....)

- Alternate Remedy – some leading cases
 - Deprox (Reporting No. 9143)
 - Division bench- Writ issued
 - Ruling on alterantie review – if there exists a question law, writ jurisiction can be invoked.
- Appeal Jurisdiction – for assessment under IT Act, 2031
 - Arti Soap – Full bench (17 No.)
 - Old Act to prevail for assessment under old Act (after new Act came into being)

Supreme Court Rulings on Jurisdiction and Deposit (Cont. ..)

- Deposit requirement for IRD review petition
 - Surya Nepal Assessment
 - IRD dismissed the petition for no deposit
 - Revenue Tribunal reversed the IRD decision
 - Supreme Court upheld the IRD decision
 - Issues involved in the case
 - No deposit for assessment
 - Law
 - Original provision – 50 percent of payable tax
 - Amended in 2060 - 50 percent of outstanding tax
 - Amended in 2061- removed (for FY 20661/62 & 2062/63)
 - Amended in 20663 – One third of outstanding tax
 - Amended in 2064- All of undisputed; one third of disputed

Some Fundamental Current Issues

- Court does not enter the merit
 - Jurisprudence does not build; patch up work
 - Amount in question matters
 - Lack of expertism- ad hoc arrangement; surprised decision
- Lack of response to some authorities intervention
 - Auditor General Office
 - Parliamentary commissions
- Turning a blind eye on Tax Authorities Mistake
 - No improvement in quality
 - Arbitrariness

Thank you !