

CHAPTER XXXV

RULE RELATING TO REFERENCES AND APPLICATIONS UNDER SECTION 256 OF THE INCOME-TAX ACT, 1961 (ACT No. 43 OF 1961.)

656. References to be sent to the prothonotary and Senior Master¹[at Bombay, or the Additional Registrar of the respective Benches as the case may be] – All references under section 256 of the Income-tax Act, 1961 (hereinafter in this chapter referred to “as the Act”) shall be forwarded to the Prothonotary and Senior Master,¹[at Bombay, or the Additional Registrar of the respective Benches as the case may be] and shall be dealt with on the Original Side of the High Court.

¹[Provided that References and Applications falling within the jurisdiction of Nagpur / Aurangabad / Panji-Goa Benches of Bombay High Court shall be presented to the Additional Registrar of the Bombay High Court at Nagpur / Aurangabad / Panaji – Goa as the case may be and shall be disposed of by the Judges sitting at Nagpur / Aurangabad / Panji-Goa.

Provided further that the Chief Justice may, in his discretion, order that, any case arising in the jurisdiction of the said Benches shall be heard at Bombay]

1. These words were inserted by G.N. of 11-2-2000, IV-C, p. 86, M.G.G. Pt.- IV-C, dt. 02.03.00

657. Notice of reference to party at whose instance reference is made - When the Appellate Tribunal refers a case to the High Court, it shall give notice of that fact to the party at whose instance the reference has been made and shall call upon him to take such steps in the office of the Prothonotary and Senior Master¹[at Bombay, or the Additional Registrar of the respective Benches as the case may be] as may be necessary for bringing the reference to a final conclusion.

658. Filing of statement of case, issuing notice and fixing date for the hearing – The party at whose instance a reference has been made shall file the statement of the case in the office of the Prothonotary and Senior Master¹[at Bombay, or the Additional Registrar of the respective Benches as the case may be] and shall forthwith take steps to bring the reference to a

final conclusion. Such party shall apply to the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] to issue notice and to fix a date for the hearing of the reference and shall serve the notice on the opposite party. If such party fails to take such steps for two months from the receipt of the reference in the High Court, the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] may set down the reference on board for orders. The Court may pass such order on the reference as it may deem fit.

1. These words were inserted by G.N. of 11-2-2000, IV-C, p. 86, M.G.G. Pt.- IV-C, dt. 02.03.2000.

659. Preparation of Paper Book – The party at whose instance a reference has been made shall prepare the paper book which shall contain the Statement of the Case and other papers forwarded by the Appellate Tribunal. The paper book shall be typed or cyclostyled, but the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] may, on the application of any party, direct that the paper book be printed. Two copies of the paper book shall be filed in the office of the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] within two months from the date of the filing of the reference in the High court.

660. Failure to file Paper Books – In the event of non-compliance with the last preceding rule, the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] may set down the reference on board for orders. The Court may pass such order on the reference as it may deem fit.

661. Application under sub-section (2) of section 256- An application under sub-section (2) of section 256 of the Act shall be presented to the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*]. Such application shall be by petition. There shall be annexed to such petition copies of the order and judgment, if any, of the Appellate Tribunal, and also of the relevant documents on which the applicant wants to rely in support of his application.

662. Placing of application before the Court – The Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] shall place such application before the Court on a day appointed by the Chief Justice. The Court may either reject the application summarily, or order a rule *nisi* to issue to show cause why the order applied for should not be made. The rule shall be made returnable on such date as the Court may direct.

663. Service of rule *nisi*. – The rule *nisi* together with a copy of the application shall be served on the opposite party i.e. on the assessee or the Commissioner of Income-tax, as the case may be, at least fourteen days before the returnable date of the rule.

664. Time for furnishing copies of application – On a rule *nisi* being issued, the applicant shall furnish to the office of the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] two type-written or cyclostyled or printed copies to such application with all its annexures at least one week before the day fixed for the hearing of the rule.

665. Answer to rule *nisi*. – Answer to rule *nisi* shall be made on affidavit and the same shall be filed at least four days before the returnable date of the rule *nisi*. Two copies of such affidavit shall be furnished to the office of the Prothonotary and Senior Maser ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*].

666. A copy of the Court's Order and judgment to be sent to the Appellate Tribunal. - Where the rule *nisi* is made absolute, the Prothonotary and Senior Master ¹[*at Bombay, or the Additional Registrar of the respective Benches as the case may be*] shall send a copy of the Court's Order and judgment, if any, to the Appellate Tribunal.

1. These words were inserted by G.N. of 11-2-2000, M.G.G. Pt.- IV-C, p.86 dt. 02.03.2000

667. References and applications to be heard by a bench – Save as provided in rule 668, all references and applications under section 256 of the Act shall be heard by a bench of not less than two Judges appointed by the Chief Justice.

668. References and applications pursuant to Act XXX of 1947 – The rules contained in this chapter shall, with any necessary modifications, apply to all references and applications made under sections 256 of the Act pursuant to section 8, sub-section (5) of the Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947), save and except that all such references shall be heard by a bench of not less than three Judges of the High Court.

669. Rules in this chapter to apply to references and applications under section 66 of the Indian Income-tax Act, 1922 – The rules contained in this Chapter shall, with any necessary modifications, apply to all references and applications made under section 66 of the Indian Income-tax Act, 1922.

²**669 A.** - Subject to the provisions of section 260A of the Income Tax Act, 1961.

- (i) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of Law.
- (ii) An appeal under this sub-section shall be filed within 120 days from the date on which the order appealed against is communicated to the appellant.
- (iii) An Appeal under section 260-A of the Income Tax Act, Precisely stating therein the substantial question of law involved, shall be filed against the decision of the Tribunal. The appellant shall annex to such Memorandum of Appeal, assessment order, Memorandum of Appeal to C.I.T. (Appeals), decision of C.I.T. (Appeals), Memorandum of Appeal to the Income Tax Appellate Tribunal as also the impugned decision of the Tribunal. As regards the Note of appearance and address for service is concerned, Rule 50 and 53 of the High Court (Original Side) Rules, 1980, shall apply to such Memorandum of Appeal.

- (iv) The Memorandum of Appeal shall be accompanied by a requisite Court fee as prescribed under the Bombay Court Fees Act, 1959 (duly amended).
- (v) Any appeal under this section, shall precisely state the substantial question of law involved in the appeal.
- (vi) Where the High Court is satisfied that a substantial question of law is involved in the case, it shall formulate that question.
- (vii) An appeal so filed shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal be allowed to argue it, that the case does not involve such a question.

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

- (viii) All memoranda of Appeal as provided in this section shall be presented to the Prothonotary and Senior Master. High Court, Bombay will accept and take on file the memorandum of appeal if sub-rule (iii) has been complied with and it appears to him to have been presented within time prescribed by law of limitation
- (ix) If the memorandum of appeal is rejected by the Prothonotary and Senior Master, he shall endorse thereon the date of its presentation and rejection and shall if requested by the appellant, place it before the Appellate Court of orders.
- (x) Application for the acceptance of a memorandum of appeal rejected by the Prothonotary and Senior Master shall be made to the Appellate Court at the earliest opportunity.
- (xi) The Appellate Court on hearing such applications shall accept or reject the memorandum of appeal with or without notice to the other side. If accepted, it shall be accepted as of the date of its presentation to the Prothonotary and Senior Master.

- (xii) Every application of leave to appeal as an indigent person shall be made by petition, setting out concisely in separate paragraphs the fact. A schedule of the petitioner's Property shall be annexed thereto. The petition shall be presented to the Prothonotary and Senior Master, who will ascertain whether it has been presented within the prescribed period, by the law of limitation and whether the provisions of the Code of Civil Procedure with respect to such applications have been complied with. If the Petition has been presented within the prescribed period and the provisions of the Code of Civil Procedure have been complied with. the Prothonotary and Senior Master shall endorse on the petition the date of its presentation and place it with necessary papers before the Appellate Court for disposal.
- (xiii) The Appellate Court may accept the petition and allow the petitioner to appeal as an indigent person, subject to an inquiry into his claim that he is an indigent person in the manner provided for such inquiry when a person applies for leave to sue as an indigent person :

Provided that if the petitioner was allowed to sue or defend as an indigent person, no further inquiry in respect of claim that he is an indigent person shall be unless the Appellate Court sees cause to direct such an inquiry.

- (xiv) The appellant shall apply and take out and serve notice of the appeal on the respondent within 15 days from the date of the Order directing notice to issue on the respondent, unless otherwise ordered. On his failing to do so, the Prothonotary and Senior Master may set down appeal on the board for dismissal.
- (xv) The Appellant shall on the acceptance of his memorandum of appeal apply to the Prothonotary and Senior Master for a copy of the notes of evidence and other necessary documents and shall prepare the appeal paper book without delay.
- (xvi) The Appellant shall prepare and lodge in the office of the Prothonotary and Senior Master within fifteen days from the service of the notice of appeal, an index of the documents to be

included in the appeal paper book and shall apply to the Prothonotary and Senior Master to appoint a time to settle the index. Notice of time so appointed shall be given by the appellant to the respondent of his Advocate on record.

(xvii) The Prothonotary and Senior Master shall settle the index and shall decided how many copies of the appeal paper book shall be prepared by the appellant.

(xviii)if a part is not satisfied with the index as settled by the Prothonotary and Senior Master, he may apply to the Judge in Chambers.

669-B. The Memorandum of Appeal shall always be in duplicate, where the appeal is from the order of the Income-tax Appellate, it shall ordinarily contain such of the documents specified in sub-rule (iii) of the Rule 669-A]

2. [Rule 669A and 669B was inserted by G.N. of 1.3.2001, M.G.G. Part IV-C, Pg. 33](#)

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