

From the Research Desk _____

Appeal before High Court by the Income Tax

Department

- i) The assessee or CCIT or CIT may file an appeal to the High Court for every order passed by

The ITAT in appeal, if the High Court is satisfied that the case involves **substantial question of law**

The words "**substantial question of law**" has not been defined. Usually five tests are used to determine whether substantial question of law is involved. They are as follows:

- Whether directly or indirectly it affects the substantial rights of the parties
 - The question is of general public importance
 - Whether it is open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or the Privy Council or by the federal court
 - The issue is not free from difficulty
 - It calls for a discussion for alternate view
- ii) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated, however the High Court is empowered to hear the appeal on any other substantial question of law not formulated by it. The High Court may determine any issue which
- Has not been determined by the ITAT; or
 - Has been wrongly determined by the ITAT
- iii) The appeal shall be in form of Memorandum of Appeal and the same shall precisely state the substantial question of law involving the appeal
- iv) All the appeals shall be filed within 120 days of the date on which the order of ITAT is received by the assessee or the CCIT/CIT. The High Court may admit an application after the expiry of period of 120 days, if it is satisfied that there was sufficient cause for not filing the same within that period

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- v) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded

- vi) Section 260B provides that an appeal shall be heard by a bench not less than two judges. Where the judges differ in opinion, the point of law in which they differ shall be referred to one or more of the judges of the High Court and shall be decided according to the majority of judges

- vii) Section 260(1A) provides where the High Court delivers a judgment in an appeal filed before it u/s 260A, effect shall be given to the order passed on appeal, by the AO on the basis of a certified copy of judgment.