

Art of Representation before the AO, CIT(A) and Tribunal

____TH Batch of the course on
**GENERAL MANAGEMENT AND COMMUNICATION
SKILLS**

At Bangalore Branch of SIRC of ICAI

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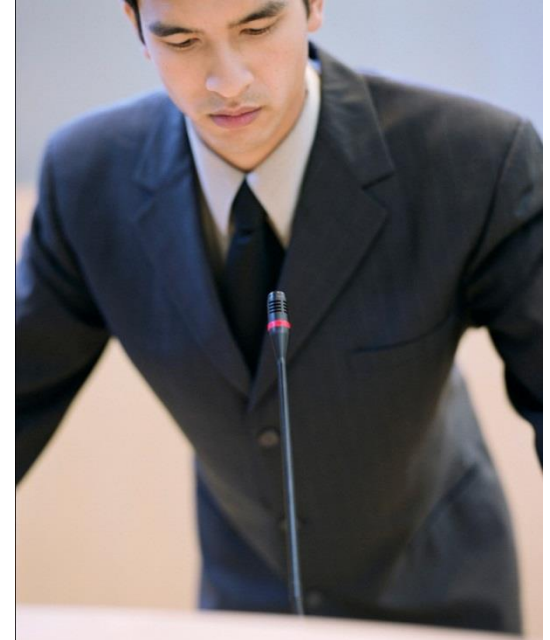
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Introduction

- Art of representation is not merely an Art of communication but it is the **art of persuasion**
- **Reading habit** to be inculcated – Reading not only tax materials but non - tax legal material.
- Speed reading to be practiced.



Essentials to Remember

Essentials to remember

1. Dress code (Rule17A):

- Prescribed for ARs other than relatives and employees of the assessee.
- For males–Suit with a tie or buttoned up coat over a pant /doti / pyjama – colour of the coat preferably black.
- For females - black coat over white or any other sober colour saree
- Dress code prescribed by the professional bodies.



Essentials to remember

- 2. Letter of Authority (Rule 17):** File it along with the Appeals or at least before the commencement of the hearing
- 3. Communications to the Tribunal:** All the communications to the Tribunal should bear the appeal number and the Bench thereof. If details are not available, the date of filing the appeal should invariably given
- 4. Filing of Affidavits (Rule 10)**
- 5. Date of Presentation of Appeal**



Essentials to remember

6. Written submissions: It must be filed before the Tribunal at least one day before the date of hearing along with a proof of serving the same on the DR at least a week in advance.

7. Paper Book: Contains the evidences relied on. If documents are in Other language, its English translation must be enclosed.

8. Language: The language of the Tribunal shall be English.

9. Make notes



Essentials to remember

10. Be honest and sincere: Never defend wrong deed. A CA has to be the first judge of his client, as and when he receives the brief he forms his opinion on the case. Explain your views to the clients boldly and honestly. This will give you sense of confidence at the time of representation before the judge.





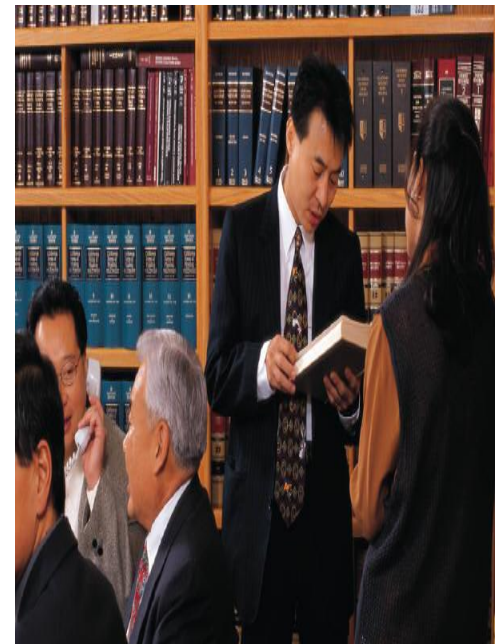
Stages during a Hearing

Preparatory Phase

Preparatory Phase

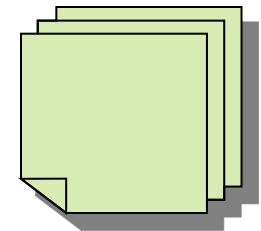
A case well begun is half won

- **Study** the Facts and understand it clearly
- **Check** whether case is covered by any amendment in the law, Judgment of SC or jurisdictional HC or by the same Tribunal
- **Prepare** paper books of the evidences to be relied on, pages to be numbered, properly indexed, binded, to be prepared in triplicate



Preparatory Phase

- **Briefings** from the client or client's accountants for effective representation before the Tribunal
- **Keep the order** of the AO and the order of the CIT(A) ready
- **Past history** of the issue in the assessee's case is important - study the same check whether the department has accepted the issue or is it contested. At what stage the matter has reached





Stages during a Hearing

Transit Phase

Transit Phase



If the Tribunals are temples of justice then the members are Gods so far as the issues before them are concerned

Transit Phase

Addressing the members and decorum inside the court room

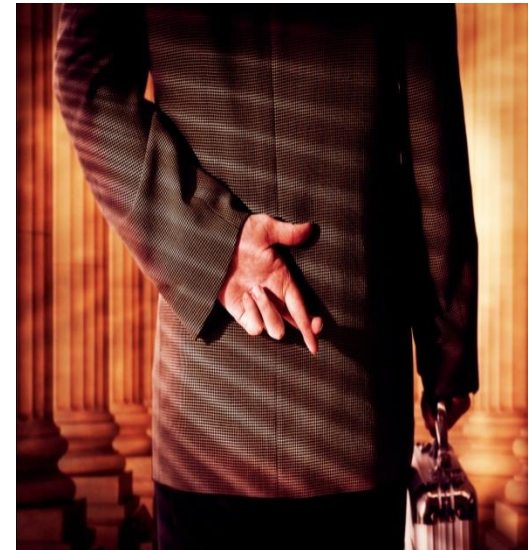
- **Address the members** and not the DR – Follow the Bench, you are there to convey & convince and not to impress.
- Carefully **watch the reactions** of the bench, trend of questioning.
- **Do not argue** – EXPLAIN



Transit Phase

Art of representation lies – not in lies but in being fair and honest.

- **Explain the facts** clearly
- **Be honest** to the facts. Law will take its own course
- Quote only **relevant case laws**



Transit Phase

Behavior in front of Tribunal

- Sometimes the bench asks some irrelevant and irritating questions, **Maintain Cool**
- Register a point through wit and **humor**
- Always keep in mind that we are there to **assist the Tribunal** in taking decision



Transit Phase

- **Do not ridicule** the AOs order, let the members see the absurdity
- **Avoid temptation** to retort. Do not interrupt the DR while he is putting forward his case. Do not show reactions by gestures
- **Be seated** when DR is putting forward his case
- Do not reply to reply



Transit Phase

Do Mind your Language

- Use **simple but effective** language. Avoid flowery and heavy language
- Keep your words soft and arguments hard
- In the heat of argument **do not make misleading or false statements**



Stages during a Hearing

Closure

Closure Phase



- **Study the judgment** of the Tribunal and consider if MP is required to be moved to correct omissions or factual errors
- If the order is perverse, **explore the possibilities** of approaching the HC



Mantra

*When you lose a case, don't lose the
lesson*



Manohar Chowdhry & Associates

— CHARTERED ACCOUNTANTS —



Mantra

***Success should not enter your
head***

***Failure should not touch your
heart***

Roll Call of Hearing

Roll Call of Hearing

- Adjournments
- Covered Matters
- Stay applications
- Stay granted matters
- Other matters where counsel/ CAs present
- Ex-parte orders

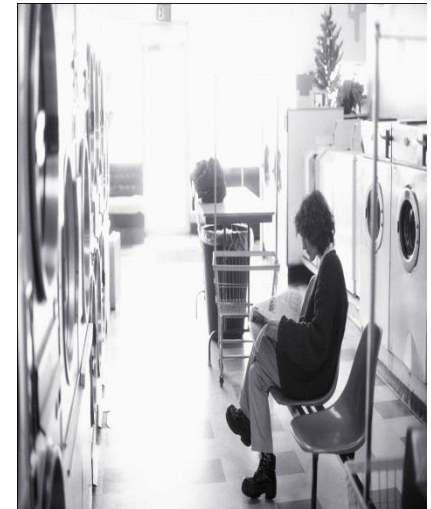


Grounds of Appeal

Grounds of Appeal

They are the grounds for challenging the impugned order

- They spell out the grievances and objections of the appellant
- They have to be set forth concisely and under distinct heads, numbered consecutively. It should not be argumentative



Grounds of Appeal

Grounds of Appeal could be:

i) Factual Grounds:

Eg: Method of accounting, available records etc.

ii) Legal grounds:

Eg: Misinterpretation of law, jurisdictional grounds etc.

iii) Grounds of Procedural violations (Technical grounds):

Eg: Notice served beyond limitation, notice not served, Invalid notice, Violation of Principles of natural justice, Inadequate hearing etc.



Mantra

*Poor representation may
result in a good case being lost*

Unwritten Ground Rules

Unwritten ground rules

General Rules

- **Learn the rules** so that you know how to break them properly
- Break the rule to **recognize yourself**
- Documents should be **properly scanned** before submitting or relied upon
- **Prompt response** to notices and letters should be ensured
- **Marking of presence** should be a matter of habit

Unwritten ground rules

Communication Rules

- Every communication in writing should be **responded to in writing**. Oral representation can supplement written submission but it cannot substitute written submission
- Being courteous and diplomatic is essential in the method of presentation but it should **not prevent plain speaking** even if it leads to an encounter

Unwritten ground rules

Submission Rules

- All submissions relating to facts, undertakings and declarations to be signed only by an assessee unless otherwise specifically required to be signed by the representative
- Alternate pleas and claims to be made promptly
- Tolerance & patience indispensable virtues of a representative

Unwritten ground rules

Delay or default Rules

- Any agreed addition should be allowed to be made only on the ground of purchase of peace from the Income-tax Department
- Any delay or default should be explained preferably on merits instead of merely contesting on technical grounds

Unwritten ground rules

Involvement Rules

- Seek adjournment only as an exception and do not postpone commitments. Do not take adjournments for granted
- Involvement with the case is inevitable but involvement with the client is not desirable

Mantra

When you realize that you have made a mistake, take immediate steps to rectify it.

Solve simple mistakes early before it leads to big problem.

We slip from small stone and not from mountain.



Understand

Live a good honorable life

So that when you get older and look back, you will be able to enjoy it a second time.



Conclusion

The profession of chartered accountancy provides the required core competence and opportunity to equip to analyze the intricacies of law and also the art of representation before various tax authorities. If perfection is sought to be achieved on the basis of experience gained over a period of time and mistakes committed are not repeated, a professional is bound to gain command over the tax affairs in the field of taxation.



Thank
You!

Manohar Chowdhry & Associates

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