

Effective Handling of Litigations before ITAT

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Litigation is a warfare in Strategy and Tactics

Before the action begins:

- Definite plans
- Marshalling of forces
- Wise anticipation
- Strategy in preparation
- Tactics in conduct of the litigation

Forming a Plan

SWOT analysis:

- Strengths
- Weakness
- Opportunities
- Threats

Preparation before

- Observation
- Conduct of the Bench
- General and legal Views

Repeated Study of the Orders **and Thinking**

- Repeated study of AO and CIT(A) orders is a must.
- Sleep over the orders, so read at least a day in advance.
- Try to find the faults.
- Think of the remedial actions or solutions also.

Eye for Details

- Details of the facts.
- “The successful lawyer must have an ignominious love of details” – Arthur Helps
- Tedious but should not deter.
- Details can unravel the most complicated cases.

The Selective Faculty

Selective in remembering the facts:

- Very Important
- Important
- Not so important
- Completely unimportant

Chronological Arrangement

- List of Dates and Events.
- Rebuild the whole sequence of events.
- Helps in understanding the case and the mind set of the AO as well as the Assessee.

Study Documents; Pursue inquiries

- Study the documents and related issues.
- Do some inquiries of other related facts and existence of other documents.
- Helps you in intelligent anticipation of your opponent's case.

The Law

- Start with the Decision settling the law.
- Look at the history to understand the evolution.
- Do Backward and Forward searches.
- Full decision and not just the head notes.
- Also look at the decisions cited in the judgement.
- Well prepared lawyer is self-confidence and courageous lawyer.

Side Issues

- Always be prepared for the side issues
- Should never get caught in surprised by the opponent's viewpoint or arguments
- Presence of mind and quick response
- Never feel shy of admitting your ignorance on law or on facts

Notes

- Thorough Notes.
- Register of decisions.
- Notes as per the broad grounds.
- Query from the bench should be properly noted.
- Any arguments made by the other side should also be noted.
- Should be such that other lawyer can use it.

Keep Your Papers Well Arranged

- Papers must be arranged properly.
- If at the right time right paper is not traceable, you may lose the matter.
- Creates a wrong impression on the judge.
- May break your link and thread of argument.
- Tempers are upset.
- Effect of good speech or arguments may be irretrievably lost.

Rehearsal of Arguments

- Rehearsal of the Arguments
- If possible, discuss the case with your colleagues.
- Argue the case with them and see the impact.
- Chances of missing out on any important arguments would be less.
- Clarity and brevity.

Your Case

- Theory of your case as a whole
- The facts are meaningless unless they fit into a hypothesis.
- This process will help you understand the case and can plug many loop holes.

Presentation of Case

- Case should be presented in simple but interesting language.
- Blink – First 5 minutes are most important.
- First give a bird's eye view then take into details.
- Go for minute details or reading of order only if asked for.

Opponent's Case

- Understand your opponent's case as if you are a lawyer for the other side and try to apprehend the arguments.
- Deal with the case and arguments of the opponent in your arguments only.
- Destroy the stronger points of opponent's case in your arguments.

Rejoinder

- No new arguments.
- Only destroy what has been argued by the other side.
- If required, repeat.
- Deal with the best case of the opponent.
- Point out the strongest points favouring you again, if need be.

General Practical Suggestions

- Keep track of the orders.
- Sharing of orders and information.
- Sensitive and important matters should not be argued by the DR on rotation.
- Active co-ordination with AO.
- Filing of Paper book, charts and decisions.
- Data bank of orders and knowledge.

Thank You