

**INCOME TAX DEPARTMENT
MUMBAI**

INSTRUCTION ON ENGAGEMENT OF PROSECUTION COUNSELS

Dated: 18.12.2015

With a view to improve the quality of representation and to streamline the process of engagement of Prosecution Counsels for the Department to represent before Session Court and Additional Chief Metropolitan Magistrate, the following Instructions are issued herewith for compliance by all concerned:

2. Procedure and terms of engagement:

The procedure for engagement of Prosecution Counsels, renewal of their terms and requisite qualifications and terms and conditions of their engagement shall be as per guidelines at **Annexure-I**.

3. Schedule of fees, allowances and terms of payment:

As per Instruction F.No.278/13/88-ITJ dated 31.03.95 issued by Central Board of Direct Taxes, Government of India, the fees would be in accordance with the rates prescribed by the concerned Branch Secretariats of the Ministry of Law. Accordingly, the Prosecution Counsels will be engaged in accordance with the revised schedule of fees and related terms and conditions applicable to them as given in the Office Memorandum issued by Government of India, Ministry of Law & Company Affairs Department of Legal Affairs Judicial Section vide F.No.44(3)/2000-Judl. dated 10.05.2000.

This issues with the prior approval of Principal Chief Commissioner of Income Tax, Mumbai.

(S. A. Latheef)
DCIT (Prosecution)
Office of CIT (Judicial),
Mumbai

ANNEXURE - I

PROCEDURE AND TERMS FOR ENGAGEMENT OF PROSECUTION COUNSELS

1. Category of Prosecution Counsels

The Prosecution Counsels to be engaged by the department will fall into the following two categories:

- (a) Additional Public Prosecutor
- (b) Assistant Public Prosecutor

2. Eligibility Conditions for engagement as Prosecution Counsel

The eligibility conditions for each category of counsels shall be as under:

2.1. Additional Public Prosecutor: In order to be eligible for engagement as Additional Public Prosecutor, a person should

- (a) be eligible to appear before the Sessions Court as an advocate and
- (b) have a minimum experience of seven years in practice as an advocate. He should have experience of appearing before Sessions Court/s (Mumbai) in criminal matters as an advocate. He should preferably be having experience in Direct Tax matters.

2.2. Assistant Public Prosecutor: In order to be eligible for engagement as Assistant Public Prosecutor a person should

- (a) be eligible to appear before the Additional Chief Metropolitan Magistrate as an advocate and
- (b) have a minimum experience of seven years in practice as an advocate. He should have experience of appearing before Court of Additional Chief Metropolitan Magistrate in criminal matters as an advocate. He should preferably be having experience in Direct Tax matters.

3. Procedure for engagement of Prosecution Counsels

3.1 For the purpose of engagement, the applications are to be invited in **proforma-A1**, either by advertisement in local newspapers, or from Bar Association or otherwise.

3.2 A Screening Committee headed by the Chief Commissioner of Income Tax shall be formed for the purpose of evaluation of proposals received. Applicants' expertise and experience in handling (i) criminal matters including prosecution matters, (ii) Direct Tax matters, (iii) aptitude for interpretation and their suitability to represent the cases of the department will be examined by the committee and an evaluation report along with recommendation of the Chief Commissioner of Income Tax will be sent to the Central Board of Direct Taxes in Proforma-B.

3.3. The First engagement of each Counsel shall normally be for a period of three years.

4. Performance review

4.1 The performance of the counsels shall be reviewed by the jurisdictional Principal Commissioners / Commissioners of Income Tax whose cases have been represented by the Prosecution Counsel and shall be submitted to the Chief Commissioner of Income Tax or to the Commissioners of Income Tax (Judicial) before 15th of the month following end of each quarter.

4.2 On the basis of the reports received from the Principal Commissioners / Commissioners, the Chief Commissioner shall review the performance of the counsels for every financial year.

5. Allocation of cases to Prosecution Counsels

5.1 The Chief Commissioner of Income Tax will be the overall in charge of entire litigation work of prosecution cases of Income-tax Department in his region before the Session Court and Additional Chief Metropolitan Magistrate. In respect of cases pertaining to Director General of Income Tax (Investigation)'s jurisdiction, the Director General concerned will be the in-charge. Allocation of cases to the Counsels may be made by the jurisdictional Principal Commissioner / Commissioner / Director of Income Tax.

5.2 The Advocate from the panel of Prosecution Counsels alone would be authorized to argue cases unless exigency of particular circumstances requires relaxation of this condition. The Chief Commissioner shall be competent to relax this condition and allow specified prosecution Counsels to argue cases of the department.

5.3 Normally all cases in the Court of Additional Chief Metropolitan Magistrate will be argued/attended by Asstt. Public Prosecutor., however any case / group of cases may be assigned by the jurisdictional Principal Commissioner /

Commissioner anytime to the Addl. Public Prosecutor with the approval/direction of the Chief Commissioner.

6. Termination of engagement/resignation/expiry of term

The engagement of the Counsel would be terminable through written intimation by either side without assigning any reason. The Chief Commissioner is authorized to act on behalf of the department for the purpose. On expiry of the term or termination or resignation, the Prosecution Counsel shall immediately and without any precondition handover the briefs, other related papers along with the NOC (No Objection for change of Counsel) to the Principal Commissioner / Commissioner concerned or the other Prosecution Counsels nominated by the Chief Commissioner for the purpose.

7. Duties of the Prosecution Counsel

A. The Counsel shall

- 7.1 Draft & file complaints with Session Court & Additional Chief Metropolitan Magistrate, Mumbai within reasonable time on behalf of the department
- 7.2 Represent the Department on each & every hearing in respect of each and every case assigned to him.
- 7.3 File reply / information / documents / reports etc. before the Court on behalf of the department.
- 7.4 Communicate defect / objection in the complaint(s), if any and take prompt steps to rectify the same with the help of concerned Commissioner of Income Tax / Assessing Officer.
- 7.5 Appear on behalf of the Department in the Court / other judicial forums, as required in the cases assigned to him;
- 7.6 Appeal on behalf of the Department in the department in the Sessions Court as & when requested.
- 7.7 Submit the intimation regarding Court proceedings through special messenger on day to day basis in respect of each and every case / hearing in the office of the Deputy Commissioner of Income-tax (Prosecution), Mumbai well in time so that the same can be communicated to concerned authorities for necessary compliance.
- 7.8 Submit the certified copies of orders issued by the Court through special messenger on priority basis in respect of each & every case with specific remarks in the Office of the Deputy Commissioner of Income Tax (Prosecution), Mumbai well in time so that the same can be communicated to concerned authorities for necessary action.
- 7.9 Submit the professional bill on monthly basis.

- 7.10 Perform such other duties of legal nature, which may be assigned to them by the department.
- 7.11 Follow the instruction(s)/direction(s) issued by the Department time to time.

Proforma 'A' of Annexure I

Particulars to be furnished by an advocate applying for engagement as Prosecution counsel

1. Name of the person
2. Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence including e-mail, Telephone/Mobile No.
6. Permanent address
7. Educational Qualification *
8. Date of enrolment as an advocate in the State Bar Council and Registration No.*
9. If a partner in a firm, name(s) of the firm(s) and other partners
10. Number of cases relating to criminal proceedings and also relating to direct tax laws dealt with in last 7 years*. May also give highlights of achievements/accomplishments during practice as an Advocate
11. Number of cases published in Journals/Newspapers, etc.
12. Income from Professional Practice (copy of the latest I.T. return to be attached)

Verification

I Son / daughter of, do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief.

Date:

Place:

Signature

***Applicant to submit documentary proof with respect to aforesaid items/information.**

Undertaking

I..... Son / daughter of, do hereby declare that if engaged by the department, I shall fully abide by the terms and conditions of the engagement.

Date:

Place:

Signature

Note: CCIT referred to in this Instruction will mean Chief Commissioner of Income Tax in charge of Judicial work in the CCA region.

Note: An applicant can submit only one application and only for either of the two categories i.e. Adll. PP and Asstt. PP

Proforma 'B' of Annexure I

Particulars/evaluation report of a person applying for engagement as Additional Public Prosecutor / Assistant Public Prosecutor

1. Name :
2. Category (Assistant PP / Additional PP/) :
3. Date of enrolment as an advocate in the State Bar : Council and Registration No.:
4. Number of cases relating to criminal proceedings and also relating to direct tax laws dealt with in last 7 years*.
5. Number of cases published in Journals/Newspapers etc.:
6. Income from Professional practice:
7. CCIT's recommendations on the overall suitability of the applicant for Direct Tax prosecution matters based on his experience, expertise, factors emanating from the presentation by the Counsel etc.:

Chief Commissioner of Income-tax