

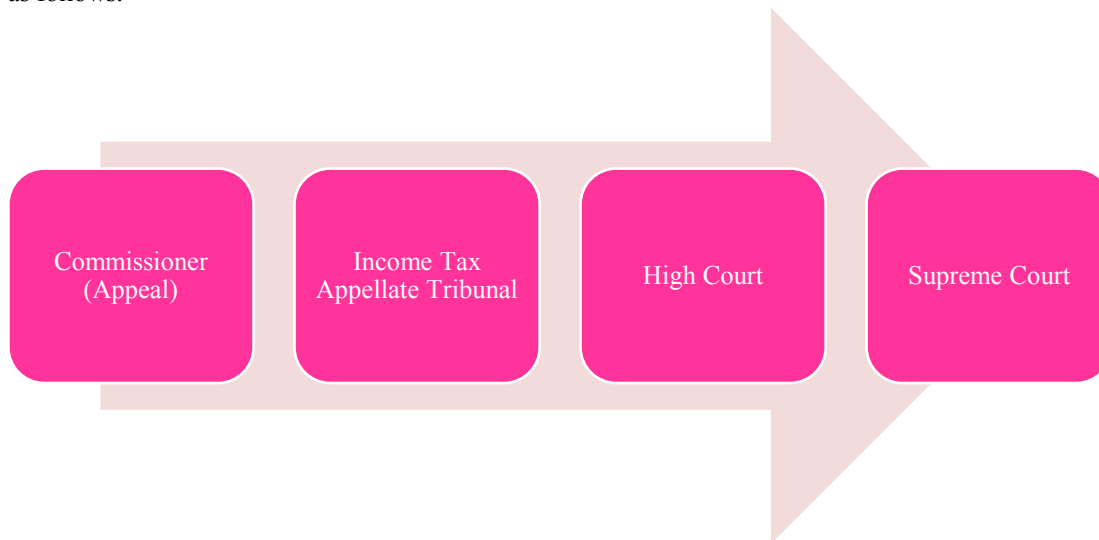


APPEAL AND REVISION IN INCOME TAX ACT - ROLE OF CMA






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In general, any cases being filed and heard first in Civil Court, thereafter aggrieved parties may file a case in High Court and for further relief or justice, aggrieved party finally file case in Supreme Court. But the cases of Revenue are not file to Civil Court. The route of revenue cases is different.

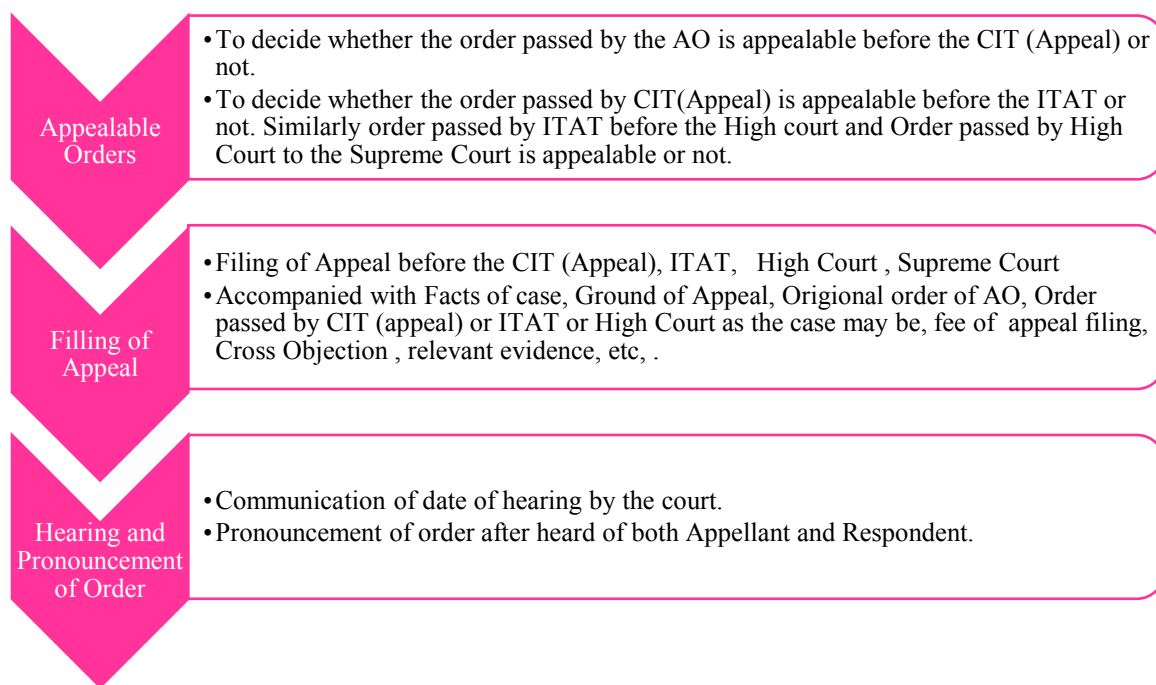
Any Assessee or any Deductor or any Collector of tax at source, who is aggrieved from the order passed by the Assessing officer, shall first file an appeal to the Commissioner (appeal). Then case shall be moved and an appeal shall be filed to Appellate tribunal, by the assessee or Deductor or Collector of tax at source or Principal Commissioner or Commissioner of Income tax as the case may be, if they are aggrieved with the order passed by the Commissioner (Appeal). Thereafter case shall be moved to High Court, if assessee or Deductor or Collector of tax at source or commissioner is aggrieved to the order passed by the Appellate tribunal and at last to Supreme Court, if Assessee or Deductor or Collector of tax at source or Principal commissioner is aggrieved to the order passed by the High court . Thus route of income tax revenue cases is as follows.



Sections covered Appeal and Revision

- Section 246 – 251  Appeal before the Commissioner (Appeal)
- Section 252- 256 -  Appeal to the Appellate Tribunal
- Section 260A – 260B -  Appeal to High Court
- Section 261- 262-  Appeal to Supreme Court
- Section 263- 264 -  Revision of Orders

Steps Involved. Generally following three steps are involved in compliance of the provisions of Appeal and Revision under the Income Tax Act, 1961.



Appealable Orders to file appeal before the Commissioner (Appeal) u/s 246A

Section 115VP(3)(ii)	Refusing to approve the option for tonnage tax scheme filed by a Qualifying Indian Company having business of operating of ships to the Joint Commissioner.
Section 143(1),(1B),(3)	Regular Assessment order passed or /intimation by the AO in response to return filed u/s 139 or Order after scrutiny of return filed passed u/s 142(1) or by CPU(Central Processing Unit)
Section 200A(1)	Processing of statement of Tax deducted at source
Section 206CB(1)	Processing of statement of Tax collected at source
Section 144	Best judgment assessment order
Section 144BA(12)	Reference to Principal commissioner in certain cases at any stage of assessment proceeding by the AO, if he belief and satisfy that arrangement/agreement revoke meaning of Generally Anti Avoidance Rule under chapter XA, for assessment
Section 115WE(3)	Assessment order passed by the AO against return of fringe benefit tax
Section 115WF	Best judgment of fringe benefit
Section 115WG	Fringe benefits escaping assessment
Section 147	Income escaping assessment i.e reassessment, re computation
Section 150	Re assessment or re computation in consequence to order passed by way of appeal, court
Section 153A	Assessment in case of search or requisition
Section 92CD(3)	Order passed to advance pricing agreement.
Section 154	Rectification Order
Section 155	Other amendments
Section 163	Treating the assessee as the agent of non-resident
Section 170(2),(3)	Succession to business otherwise than on death.
Section 171	Assessment order after participation of HUF
Section 201	Consequences of failure to deduct tax or pay the deducted tax at source
Section 206C (6A)	Consequences of failure to collect tax or pay the collected tax at source

Section 237	Refund claimed not paid or short paid
Section 221, 271,271A,272,275 ,158BFA, 271B, 271BB, 271C, 271CA, 271D,271E,272A, 272AA	An order imposing a penalty

Form of Appeal and Procedure

- Appeal shall be filed in **Form No. 35** and shall be filled electronically.
- Appeal shall be filed **within 30 days** of the service of notice or in case of order u/s 248, the date of payment of tax. CIT (Appeal) may condone the delay in filing appeal; if he satisfies that there is a sufficient cause to do not file appeal by the appellant within stipulated time. If there is a delay in filing appeal, appellant must mention valid reason for delay and pray to condone the delay in filing appeal whiling uploading Form No. 35.
- Fee shall be **Rs. 250/-** if amount of total income computed by AO is **Rs. 1 lakhs. Rs. 500/-**, if computed income is **Rs. 1 lakh to Rs. 2 lakh, Rs. 1000/-**, if computed income is more than **Rs. 2 lakh**. If computed income is less than **Rs. 1 lakh or nil**, fee shall be **Rs. 250/-** . Details about appeal fee has to be mention in Form No.35, like BSR code, Challan serial number, Date of payment, amount paid.
- Facts of case and Grounds of appeal must be precise and with relevant section of Income tax Act has to be mention in Form No.35. An application to pray for stay of demand till disposal of case should be accompanied with the form. Pre-deposit, 20% of demand has to pay on or after the appeal is filed.
- CIT (Appeal) shall fix date and place of hearing and give notice to both, appellant and AO.
- CMA has to furnish Power of attorney to plead the case on behalf of assessee before the CIT (appeal) and affix a court fee stamp value of at least Rs. 5 or of value as per relevant State Stamp Law.
- After heard of both parties, order shall be passed by the commissioner (Appeal).

Appeal to Appellate Tribunal, Sec.253

- Aggrieved party may file an appeal against the order passed by CIT (Appeal).
- Appeal shall be filed to ITAT in **Form No. 36** within **60 days** of service of order from the office of Commissioner (Appeal). Form No. 36 shall be filed manually either in person or through speed/registered post or courier.
- Fee shall be **Rs. 500/-**, if demand is up to **Rs. 1 lakh. Or Rs. 1000/-**, if demand is from **Rs. 1 lakh to Rs. 2 lakh**, or **1% of demand subject to maximum amount Rs. 10,000/-** if demand is more than **Rs. 2 lakh**. Copy of challan must be accompanied with the Form 36.
- An application for stay demand till the disposal of case by the Income Tax Appellate Tribunal shall be accompanied by a fee of **Rs. 500/-**
- Form 36, shall be filed in triplicate, accompanied with 2 copies at least one should be certified to be true, copy of appeal order, 2 copies of relevant Assessing Officer order, 2 copies of grounds of appeal or grounds of objection. One copy shall be given back to the appellant as a token of acknowledgment.
- Memorandum of cross-objection shall be filed, by respondent in Form No. 36A, in triplicate, within 30 days from the date service of notice by ITAT. No fee is required to be paid. Cross objection has to file by the respondent.
- Bench of Appellate tribunal shall fix the date of hearing. There shall be one judicial member and one account member seated in the appellant tribunal bench. The bench shall be OC (One member court) or DC (Double member Court). Sometime bench shall hear the case through Video conferencing i.e, e-court. After heard to both i.e. appellant and respondent, may pronounce and pass the order within 4 years from the date of filling the appeal to ITAT.
- The ITAT have all the powers which are vested in income tax authority u/s 131, and any proceedings before the ITAT shall be deemed judicial proceeding within the meaning of sec. 193 and 228 of Indian Panel Code and appellate tribunal shall be deemed to be a **Civil court** for all the purposes of sec. 195 of the code of Criminal Procedure.

Statement of case to the High Court, Sec. 256

- The Assessee or Principal commissioner or commissioner, may within **60 days** of the date of order served by ITAT, file an application in Form No. 37 to the ITAT and require the ITAT to refer to the

High court any question of law arising out of such order. The assessee shall pay a fee of Rs.200 and accompanied with the application. No fee has to pay in case application is filed by the Principal Commissioner or Commissioner as the case may be.

- ITAT shall within 120 days draw up a statement of the case and refer to the High court.
- If ITAT refuse the application on the ground that there is no question of law arise in such order, then assessee or commissioner as the case may be, shall within **Six months** apply to the High court against the refusal of ITAT.
- A bench of two judges of High court shall hear the case and shall direct the appellate tribunal to make a statement of substantial question of law, if they found that there is a question of law arises in such order passed by the appellate tribunal.

Statement of case to the Supreme Court, Sec. 257

- If, on an application u/s 256, the Appellate tribunal is of the opinion that, on account of a conflict in the decisions of High courts in respect of any particular question of law, it is expedient that a reference should be made direct to Supreme court.

Appeal to High Court, Sec. 260A

- An appeal shall lie to the High court from every order passed in appeal by the Appellate tribunal, if High court is satisfied that the case involves a substantial question of Law.
- The word ‘substantial question of Law’ has not been defined. But the expression has acquired connotation through a catena of judicial pronouncements. Usually five tests are used to determine whether a substantial question of Law involved.
 - (i) Whether, directly or indirectly it effects substantial rights of the parties
 - (ii) The question is of general public importance
 - (iii) Whether it is an open question in the sense that issue has not been settled by pronouncement of the supreme court or the Privy Council or by the Federal court
 - (iv) The issue is not free from the difficulty, and
 - (v) It calls for a discussion for alternate view.
- CIT or assessee aggrieved by any order of ITAT may file appeal to High Court within **120 days** from the date of order received, along with a memorandum of appeal precisely stating therein the substantial question of law involved.
- When High court is satisfied that a substantial question of law is involved shall admit the case and it shall formulate the question.
- The appeal shall be heard only on the question so formulated.
- It shall be heard by a bench of **two judges**.

Appeal to Supreme Court, Sec.261

- An appeal shall lie to the Supreme Court from any judgment of the High court delivered in any case which High court certifies to be fit one for appeal to the Supreme Court.
- Provisions of the Code of Civil Procedure, 1908 relating to appeals u/s section 261 shall apply.

Revision of orders prejudicial to revenue, Sec. 263

- The Principal commissioner or commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the AO is erroneous and is prejudicial to the interest of the revenue, he may direct for fresh assessment.
- Revision order shall be passed within a period of two years form the end of F.Y. in which the order passed.
- Order of revision in consequence of direction by ITAT, High court or Supreme Court, shall be passed at any time.

Revision of other orders, Sec. 264

- In any other order other than order to which sec.263 applies, commissioners may, either suo motu or on an application filed by the assessee for revision, call the record of any proceeding and revise the order.

- No order shall be passed suo motu by the commissioner more than one previous year.
- Assessee shall file application within a period of one year from the date on which he has served the order.
- Commissioner shall not pass revision order if case is pending for disposal before the court of any commissioner (Appeal), ITAT, High Court or Supreme Court.
- Every application shall be accompanied with a fee of **Rs. 500/-**
- Order under this section shall be passed within one year from the end of f.y. in which application made.

Role of CMA. Whether CMA can plead before the Income Tax Authority on Behalf of Assessee?

- Yes, CMA in practice can appear before the AO, Commissioner (Appeal), Income Tax Appellate Tribunal on behalf of assessee and plead the case.
- Section 288(2)(V) , read with Rule 50C (3) empower the CMA to appear before the AO, Commissioner (appeal), Principal Commissioner or Commissioner and Income Tax Appellate Tribunal.
- The income tax Appellate Tribunal, like any judicial body, has a number of procedural requirements that are required to comply by the authorized representative.
- **Some important procedure as per Income Tax Appellate Tribunal Rules, 1963 are...**
- Every memorandum of appeal to be written in English and shall forth, concisely and under distinct heads, grounds of appeal without any argument or narrative, and such grounds shall be numbered consecutively.
- Submission of paper books at least one day before the date of hearing. At least four sets should be prepared (two sets for members of the appellant tribunal bench, one copy for departmental representative who pleads the case on behalf of Income Tax Department and one office copy of authorized representative). Paper book may accompany all relevant evidence, citation of case laws of Tribunal or High Court or Supreme Court in support of grounds of appeal, other relevant documents and information. An index should be made and all attachments in paper book must be numbered consecutively.
- An application for condone for delay in filing of appeal along with affidavit for reason of delay thereof have to file if delay in filing appeal occurred.
- **Dress code (Rule 17)**. A provision for dress code is made in Appellate Tribunal Rule for authorized representative and it is mandatory. ITAT court shall not allow the AR to plead, if AR doesn't appear with the required dress code. Dress code for **male CMA** is, a suit with a tie or button-up coat over a pant. The color of coat must, preferably Black or dark blue. In case of **female CMA**, black coat over white or any other sober color saree or Salwar Suit.
- Furnished power of attorney in a non-judicial stamp paper value specified in relevant state stamp Law. In Jharkhand it requires on Rs. 100 value.

Practical Tips for CMA who suppose to appear before the Appellant Tribunal.

Scene in Income Tax Appellate Tribunal is totally different from the AO room or CIT (Appeal) court room. In the court room of AO or CIT (appeal) hearing is made one to one. But in appellant tribunal court room, you will not be alone. There may be numbers of pleader of listed case on a particular date i.e. an Advocate, CMA, Chartered Accountant, Departmental representative, staffs of appellate court and others along with members of bench. Your performance shall be seen and heard by all others. So, you as authorized representative have to require must be up date to the provision of Income tax Act, be fully aware about the case and remember the facts of case, grounds of appeal, and all the attachments in the paper book. Most important very carefully listen the members of bench and departmental representative. Your argument must be to the point. You have to speak about the case and your points in support of your appeal. To win the case hard work and presence of mind in court room is required.

CMA members in practice should visit regularly if possible, appellate tribunal court room when bench are seated for hearing the case even if his case is not listed nor have any case. Exposure of appellate tribunal court is one of the basic conditions to be successful in appellate tribunal court proceedings.