



ICMAI

The Institute of Cost Accountants of India

(Statutory Body under an Act of Parliament)

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PRACTICAL GUIDE ON Appeals before Appellate Authority under Income Tax Act

**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**

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Direct Tax

Behind Every Successful Business Decision, there is always a CMA

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Mission Statement

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

Institute Motto

असतोमा सदगमय
तमसोमा ज्योतिर् गमय
मृत्योर्मा मृतं गमय
ॐ शान्ति शान्ति शान्तिः

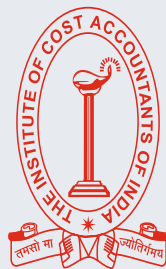
From ignorance, lead me to truth
From darkness, lead me to light
From death, lead me to immortality
Peace, Peace, Peace

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PRACTICAL GUIDE ON

Appeals before Appellate Authority

under Income Tax Act



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Appeals before Appellate Authority under Income Tax Act

Appeals before Appellate Authority under Income Tax Act

Regulatory Framework

Sections	Income-tax Act, 1961
Section 246	Appealable order before Joint Commissioner (Appeals)
Section 246A	Appealable order before Commissioner (Appeals)
Section 249(1)	Procedure for filing of Appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)
Section 249(2)	Period of Limitation to prefer an Appeal before Joint Commissioner (Appeals) or Commissioner (Appeal)
Section 249(4)	Payment of Tax before filing Appeal before Joint Commissioner (Appeals) or Commissioner Appeal
Section 250	Procedure an Appeal before Joint Commissioner (Appeals) or Commissioner Appeal
Section 250(6B)	Faceless Appeal Scheme
Section 251	Powers of the Commissioner (Appeals)
Section 252	Appellate Tribunal
Section 253(1), (2)	Appealable Orders to Appellate Tribunal
Section 253(3), (4) & (6)	Procedure for filing appeal before Appellate Tribunal
Section 254	Order of Appellate Tribunal
Section 255	Procedure of Appellate Tribunal
Section 260A	Appeal to High Court
Section 261	Appeal to the Supreme Court
Section 263	Revision of orders prejudicial to the Interest of Revenue
Section 264	Revision of orders prejudicial to the Interest of Assessee
Relevant Rules	Income Tax Rules, 1962
Rules 45	Form of appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)
Rule 46A	Production of additional evidence before the Joint Commissioner (Appeals) and Commissioner (Appeals)
Rules 47	Form of appeal and memorandum of cross-objections to Appellate Tribunal
Relevant Forms	
Form No. 35	Form of Filing an appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)
Form No. 36	Form of Filing an appeal before Income Tax Appellate Tribunal
Form No. 36A	Memorandum of Cross Objection

BRIEF BACKGROUNDS – INCOME TAX APPEALS

- 1.1. A tax payer aggrieved by any of the orders passed by the Income tax authorities, which are specified as ‘appealable orders’ in the Income Tax Act, 1961, has a right to file an appeal before the Commissioner of Income Tax (Appeals), having jurisdiction over the taxpayer. CIT(Appeals) is the first level of appellate authority, comprising a single-member authority. CIT (Appeals) positions are manned by officers from the Indian Revenue Service and are under the administrative control of the Central Board of Direct taxes. However, functionally, they are independent in their decision-making and for that purpose are bound to follow law position on various issues, as interpreted by higher judiciary. CIT(Appeals) decide the appeal by passing a written order, after hearing the taxpayer (called “appellant”), by which the orders of the Assessing officer can be confirmed, modified or annulled, which may have the effect of reduction, deletion or enhancement of the quantum of demand raised by the assessing officer.
- 1.2. An order of the CIT(Appeals) can be appealed against, by either of the two parties, namely, the taxpayer or the Income tax department, before the Income Tax Appellate Tribunal (called as “ITAT”), which is the second level appellate authority. ITAT is a multi-member body comprising of judicial and accountant members, independently appointed by the Ministry of law. Typically, an ITAT bench comprises of two members. An ITAT bench decides an appeal, on hearing the authorized representatives of the taxpayer and the Income Tax department, by passing a written order, by which it can confirm, partly confirm or annul the order of the CIT (Appeals) and thereby can delete or reduce the quantum of demand, however, ITAT cannot enhance the demand. Importantly, ITAT is the final fact-finding authority. Income Tax appeals against the orders passed by ITAT can be filed by either of the parties before the respective High Courts of judicature (the third level of appellate authority). However, generally, an appeal before a High Court is admitted only if it involves a substantial question of law. Supreme Court, which lays down final interpretation of law on an issue, can be approached by either of the parties against the order of a High Courts, albeit again, only on a question of law.
- 1.3. Functional independence and objective decision-making are an important hallmark of the Income tax appellate mechanism. Both ITAT and the CIT(Appeals), despite being under the administrative control of Ministry of law and the Ministry of Finance, respectively, are governed by the principle of judicial hierarchy. All appellate authorities are bound by the decision of the Supreme Court on a question of law. In the absence of a contrary decision

of Supreme Court, the jurisdictional ITAT and the CIT(Appeals) are bound by the decision of the High Court of judicature. In the absence of any decision of the High Court of judicature in respect of an ITAT bench and corresponding CIT(Appeals), the decision of any High Court on a question of law would have binding precedence. On identical facts, CIT(Appeals) in a jurisdiction are bound by the decision of the jurisdictional ITAT, provided there is no contrary decision of Supreme Court or of any of the High Courts.

- 1.4. Taxpayers not only have a right to appeal and get a decision in independent and objective manner, but also have a right to get prompt effect by the Income tax authorities to the outcome of an appeal order. The Citizen's Charter of the Income Tax Department lays down service delivery standards of highest standard, by which Income tax authorities are committed to give effect to the appeal order and issue refund to the taxpayer within one month. If the income tax authorities fail to give effect to the appeal order, taxpayers can approach public grievance officers, details of whom are available on the income tax department's website. Such grievances are to be redressed within 2 months.

1.5. *Appeals in Income-tax Act, 1961 - At a Glance*

Particulars	JCIT (A) / CIT (A)	Income Tax Tribunal	High Court
<i>Stage</i>	First Appeal	Second Appeal	Third Appeal
<i>Under Section</i>	246A	253	260A
<i>Appeal by</i>	Only by Assessee	Both by Assessee & Department	Both by Assessee & Department
<i>From specified Order of</i>	Assessing Officer (AO)	AO/DRP/CIT(A)/CIT	Tribunal
<i>Time Limit for filing appeal</i>	30 days	60 Days	120 Days
<i>On question of</i>	Both Fact & Law		On substantial question of Law
<i>Administrative Control of</i>	CBDT	Law Ministry	Independent from Government
<i>Hearing by</i>	One Person	Two or more Members	Two or more Judges
<i>Appeal fees as prescribed by</i>	U/s. 249(1)	U/s. 253(6)	High Court Rules
<i>Set-a-side/enhance</i>	Cannot Set-a-side but enhance	Set-a-side but cannot enhance	
<i>Additional Evidence</i>	Can be admitted		Cannot admit
<i>Award of Cost</i>	No	Can award cost	
<i>Grant of Interim Stay</i>	No interim Stay	Can grant interim Stay	
<i>Is decision binding?</i>	Not a precedent	But only of Special Bench	Only in its Jurisdiction



APPEAL TO COMMISSIONER OF INCOME TAX (APPEALS)

At times it may happen that the taxpayer is aggrieved by an order of the Assessing Officer. In such a case he can file an appeal against the order of the Assessing Officer before the Joint Commissioner (Appeals) or before the Commissioner of Income-tax (Appeals).

JOINT COMMISSIONER (APPEALS)

The Finance Act 2023 has inserted a new section 246 in Chapter XX with effect from 01-04-2023 for filing of appeal before the Joint Commissioner of Income-tax (Appeals) [JCIT (Appeals)].

2.1. Appealable orders for appeal before JCIT (Appeals)

Any assessee aggrieved by the orders passed by an Assessing Officer (below the rank of Joint Commissioner) can prefer an appeal against such order before JCIT (Appeals). However, not all orders passed by an AO can be challenged by the assessee before JCIT (Appeals). Only specified orders (appealable orders) can be challenged before JCIT (Appeals). Further, the *proviso* to Section 246(1) provides that no appeal shall be filed before the JCIT (Appeals) if an appealable order is passed by or with the prior approval of an income-tax authority above the rank of Deputy Commissioner.

As per Section 246(1), not all orders passed by an Assessing Officer (below the rank of Joint Commissioner) have been made appealable. Only specified orders have been made appealable.

2.2. Appeal against assessment orders : An assessee can prefer an appeal with the JCIT (Appeals) against the following orders relating to the assessment:

- (a) An intimation issued under Section 143(1) where the assessee objects to the making of adjustment;
- (b) Any order of assessment passed under Section 143(3) or best judgment assessment order passed under Section 144 where-
 - the assessee objects to amount of income assessed or
 - the amount of tax determined or
 - amount of loss computed or
 - status under which he is assessed;

- (c) An order of assessment, reassessment or re-computation under Section 147;
- (d) An order being an intimation under sub-section (1) of 200A, i.e., processing of TDS statement;
- (e) An order being an intimation u/s 206CB (1), i.e., processing of TCS statement);
- (f) An order being an intimation under section 206C(6A) treating a collector of TCS as assessee-in-default;
- (g) An order under Section 201 treating a deductor as an assessee in-default;
- (h) An order imposing a penalty under Chapter XXI (Section 270A to 275); and
- (i) A rectification under Section 154 or Section 155 amending any of the orders mentioned above.

2.3. Orders against which appeal cannot be filed before JCIT (Appeals)

Proviso to Section 246(1) provides that no appeal shall be filed before the JCIT (Appeals) if an order referred to in Section 246(1) is passed by or with the prior approval of an income-tax authority above the rank of Deputy Commissioner. Thus, all orders passed by AO above the rank of JCIT and all orders passed with the prior approval of income-tax authority above the rank of Deputy Commissioner, shall be appealable before the CIT (Appeals) and not JCIT (Appeals).

2.4. Transfer of pending appeal from CIT (Appeals) to JCIT (Appeals)

The JCIT (Appeals) has been authorised to entertain the new and pending appeals. The pending appeals can be transferred from CIT (Appeals) to JCIT (Appeals) as per provisions of sub-sections (2) and (4) of Section 246. A pending appeal can be transferred from CIT (Appeals) to JCIT (Appeals), if:

- (a) The appeal has been filed against an appealable order as referred to in Section 246(1);
- (b) The Board (or an income-tax authority so authorised) transfers such appeal to JCIT (Appeals). The Board (or an income-tax authority so authorised) can also transfer any other matter arising out of or connected with such pending appeal.
- (c) Before transferring the pending appeals from CIT (Appeals) to JCIT (Appeals), the appellant shall be given an opportunity of being reheard.
- (d) On transfer of appeal, the JCIT (Appeals) may proceed with such an appeal or matter from the stage it was before such transfer

2.5. Disposal of appeals in a faceless manner

Section 246(5) authorises the Central Government to make a scheme for proceedings before the Joint Commissioner (Appeals) to be conducted in a faceless manner which shall be notified in

the Official Gazette. Further, the Board has been empowered to specify any case or class of cases to which the provision of Section 246(1) shall not apply.

2.6. Tentative time-limit of one year to dispose of the appeal by JCIT (Appeals)

The provision of section 250(6A) has been substituted by the Finance Act 2023, and it provides that the JCIT (Appeals) and Commissioner (Appeals) may, if possible, hear and decide the appeal within 1 year from the end of the financial year in which the appeal was filed. The limitation period shall apply to the following appeals:

- (a) Appeal filed before the JCIT (Appeals) under Section 246(1);
- (b) Appeal transferred from CIT (Appeals) to the JCIT (Appeals) under Section 246(2);
- (c) Appeal transferred from JCIT (Appeals) to the CIT (Appeals) under Section 246(3);
- (d) Appeal filed before the CIT (Appeals) under Section 246A(1).

2.7. Powers of the Joint Commissioner (Appeals)

The Finance Act 2023 has inserted a new sub-section (1A) to Section 251 that provides the following powers to the JCIT (Appeals) to dispose of an appeal:

- (a) In an appeal against an order of assessment, he may confirm, reduce, enhance, or annul the assessment.
- (b) In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
- (c) In any other case, he may pass such orders in the appeal as he thinks fit.

The other powers of JCIT (Appeals) are at par with CIT (Appeals) with regard to the admission of additional matters or evidence, the rectification of order, etc.

2.8. Powers of the Joint Commissioner (Appeals) to levy penalty

The Finance Act 2023 gives the power to the JCIT (Appeals) to levy a penalty under the following provisions:

- (a) Penalty under Section 270A for under-reporting and misreporting of income;
- (b) Penalty under Section 271A on failure to keep, maintain or retain books of account;
- (c) Penalty under Section 271AAC in case of undisclosed income;
- (d) Penalty under Section 271AAD for False or Omission of Entry; and
- (e) Penalty under Section 271J for furnishing incorrect information in reports or certificates.

These powers to levy a penalty are at par with the CIT (Appeals).

COMMISSIONER (APPEALS)

3.1. Appealable order

The Commissioner of Income-tax (Appeals) is the first appellate authority. Section 246A specifies the orders against which an appeal can be filed before the Commissioner of Income-tax (Appeals). The list of major orders against which an appeal can be preferred before the Commissioner of Income-tax (Appeals) is given below:

- (i) Order passed against the taxpayer in a case where the taxpayer denies the liability to be assessed under Income Tax Act.
- (ii) Intimation issued under section 143(1)/(1B) where adjustments have been made in income offered to tax in the return of income.
- (iii) Intimation issued under section 200A(1) where adjustments are made in the filed statement.
- (iv) Assessment order passed under section 143(3) except in case of an order passed in pursuance of directions of the Dispute Resolution Panel
- (v) An assessment order passed under section 144.
- (vi) Order of Assessment, Re-assessment or Re-computation passed after reopening the assessment under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel
- (vii) An order referred to in section 150.
- (viii) An order of assessment or reassessment passed under section 153A or under section 158BC in case of search/seizure.
- (ix) Order made under section 92CD(3).
- (x) Rectification order passed under section 154 or under section 155.
- (xi) Order passed under section 163 treating the taxpayer as agent of non-resident. Order passed under section 170(2)/(3) assessing the successor of the business in respect of income earned by the predecessor.
- (xii) Order passed under section 171 recording the finding about partition of a Hindu Undivided Family.
- (xiii) Order passed by Joint Commissioner under section 115VP(3) refusing approval to opt for tonnage-tax scheme to qualifying shipping companies.

- (xiv) Order passed under section 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee - in-default due to failure to deduct tax at source or to collect tax at source or to pay the same to the credit of the Government.
- (xv) Order determining refund passed under section 237.
- (xvi) Order imposing penalty under section(s) 221/ 271/ 271A/ 271AAA/ 271F/ 271FB/ 272A/ 272AA/ 272B/ 272BB/ 275(1A)/ 158B FA(2)/ 271B/ 271BB/ 271C/ 271CA/ 271D/ 271E/ 271AAB.
- (xvii) Order imposing a penalty under Chapter XXI.
- (xviii) Order passed by the AO under section 239A
- (xix) Order passed by AO under section 158BC(1)(c) on or after 01-09-2024

3.2. Time limit for presenting an appeal

The appeal has to be presented within the period of limitation as given below:

- (a) Appeal by person denying liability to deduct tax in respect of payments payable to non-resident or a foreign company [Section 249(2)(a)] : Where the appeal relates to any tax deducted at source from payment made to a non-resident, [other than a company] or to a foreign company, any interest, other than interest on securities or any other sum chargeable under the provisions of the Income-tax Act [not being salaries], within 30 days from the date of payment of tax deducted at source to the credit of the Central Government.
- (b) Appeal against assessment to penalty [Section 249(2)(b)]: Where the appeal relates to any assessment or penalty order the appeals have to be presented within 30 days of the date of service of the notice of demand relating to that assessment or penalty order.
- (c) Other appeals [Section 249(2)(c)]: In any other case, the appeal has to be presented within 30 days of the date on which intimation of the order sought to be appealed against is served on the appellant.
 - In computing the period of limitation for an appeal or an application, the day on which the order is served has to be excluded.
 - If the assessee was not furnished with a copy of the order along with the notice of the order, or demand, the time required for obtaining a copy of such order is also to be excluded and the date will be extended by that period. It may be noted that even where the assessee has not been supplied with copy of the order concerned, the time taken in making an application which does not comply with all the legal requirements cannot be excluded under the provisions of Section 268.

- If the application for obtaining the copy of the order has not been properly stamped or has been made by a person not authorised to do so, the time which has elapsed between the making of the invalid application and putting the application in order would not be excluded in computing the period of limitation.
- If any appeal is filed after the period of limitation, Joint Commissioner (Appeals) or the Commissioner [Appeals] may admit the appeal after the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period [Section 249(3)].
- Condonation Petition: Such delayed appeals must be accompanied by a condonation petition showing and explaining the reason/cause of the appellant for not being able to file the appeal within the period of limitation and praying for condemnation of the delay.
- The power to condone the delay is discretionary and the discretion must be judiciously exercised. The discretion is to be exercised where sufficient cause for not presenting the appeal within the time is made out by the appellant.
- The period for filing an appeal cannot be extended simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. The sufficient cause must be a cause which is beyond the control of the party seeking the condonation of the delay. Illness is sufficient cause, if it can be shown that the man was utterly disabled to attend to any duty.
- The cause for delay in filing the appeal which, by due care and attention could have been avoided cannot be a sufficient cause. Negligence on the part of the servants or agent entrusted with the filing of the appeal cannot be considered as a sufficient cause. The change of legal situation brought about by a decision of the Supreme Court may be valid ground for condoning delay.
- The words "sufficient cause" should receive a liberal interpretation so as to advance substantial justice where no negligence nor inaction nor want of bona fide is imputable to the applicant.
- An appeal presented after the period of limitation is still an "appeal" and an order dismissing it as time barred is one passed in appeal [under Section 250 and not under Section 249(3)].
- An appeal lies there from to the Appellate Tribunal and thereafter to the High Court on a question of law.
- Provided further that where an application has been made under sub-section [1] of section 270AA, the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee, shall be excluded.

3.3. Form of appeal

The CBDT had substituted the Rule 45 of Income-tax Rules, 1962 relating to filing of Form of appeal to CIT(A) vide Income-tax (3rd Amendment) Rules, 2016. By virtue of such amendment, the CBDT had issued a new Form No. 35 for filing an appeal before CIT(A). Further, e-filing of Form has been made mandatory for persons for whom e-filing of return of income is mandatory.

3.4. Signature to the appeal

The form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under section 140 as applicable to the taxpayer. In other words, form of appeal is to be signed and verified by following:

- (i) In case of appeal by an individual taxpayer, by the individual taxpayer himself or by a person duly authorised by him who is holding a valid power of attorney
- (ii) In case of a Hindu Undivided Family, by the Karta of the family or if Karta is absent from India or is not capable for signing, by any other adult member of such family.
- (iii) In case of a company, by the Managing Director or if Managing Director is not available or where there is no Managing Director by any director of the company.
- (iv) In case of foreign company, by a person who holds a valid power of attorney from such company
- (v) In case of a firm, by the Managing Partner or if Managing Partner is not available or where there is no Managing Partner by any partner (not being a minor)
- (vi) In case of a LLP, by the Designated Partner or if Designated Partner is not available or where there is no Designated Partner by any partner.
- (vii) In case of a Local Authority, by the Principal Officer thereof
- (viii) In case of a Political Party, by the Chief Executive Officer of such party
- (ix) In case of any other Association, by the Principal Officer thereof or by any member of the Association.
- (x) (In case of any other Person, by that Person or by some person competent to act on his behalf.

3.5. Pre-deposit of tax

Before filing the appeal, the taxpayer should pay the tax determined as per the return of income filed by him. If no return of income is filed, the taxpayer should pay tax equal to the amount of advance tax payable by him. However, on application made by the taxpayer, the

Commissioner of Income-tax (Appeal) may exempt the taxpayer from payment of tax before filing the appeal. Such benefit is granted if good and sufficient reason is proved by the taxpayer for non-payment of tax before filing the appeal.

3.6. Documents to be submitted for appeal

(I) Relevant Form and document to be filed:

- (a) Form 35 (including statement of facts and grounds of appeal) - in duplicate. However, e-filing has been made mandatory for persons for whom e-filing of return of income is mandatory w.e.f 1/3/2016.
- (b) One copy of order appealed against
- (c) Notice of demand in original
- (d) Copy of challans of fees.
- (e) The details of the challan (i.e., BSR code, date of payment of fee, serial number and amount of fee) are required to be furnished in case of e-filing of form of appeal.

(II) The appeal should be filed in Form No. 35 and verified in the prescribed manner. In this form, details such as name and address of the tax payer, Permanent Account Number (PAN), assessment year, details of the order against which appeal is filed etc. are to be filled in.

(III) Form No. 35 is the prescribed form under Rule 45(1). The form of appeal, the grounds and the verification appended to the form 35 should be furnished electronically under digital signature or through electronic verification code as per provisions applicable to the signing of return under Section 140. It also requires the memorandum of appeal, statement of facts and the grounds of the appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.

(IV) Against the column "Relief claimed in appeal", amount of reductions sought in income or any other relief sought in appeal is to be mentioned.

(V) In the column "Statement of Facts", relevant facts in respect of each subject matter of appeal are to be mentioned in brief. Nature of business or profession, account books maintained etc. may also be mentioned in this column.

(VI) Against column "Grounds of appeal", points on which relief is sought in appeal are to be mentioned in narrative form. For example, in an appeal against addition to the returned income by applying a gross profit rate on estimated turnover, the ground of appeal may be, "the Ld. Assessing Officer was not justified in rejecting the results as per regular books of account and in estimating the income by applying an adhoc rate of gross profit."

3.7. Appeal Fees Prescribed [before JCIT 9Appeals) / CIT (Appeals]

The fees for filing the appeal before the Commissioner of Income-tax (Appeals) are as follows :

Sr. No.	Case	Fees
1	Where the total income of the assessee as computed by the assessing officer is Rs. 1,00,000 or less	Rs. 250/-
2	Where the total income of the assessee computed as above is more than Rs. 1,00,000 but not more than Rs. 2,00,000	Rs. 500/-
3	Where the total income of the assessee computed as above is more than Rs. 2,00,000	Rs. 1000/-
4	In any case other than (1), (2) and (3)	Rs. 250/-

3.8. Procedure of the appeal

- After the receipt of Form no. 35, the Commissioner of Income-tax (Appeals) will fix the date and place for hearing the appeal.
- The date and place will be communicated to the taxpayer and to the Assessing Officer against whose order appeal is preferred. The communication will be made by issuing a notice to both the parties.
- In the appeal proceedings the taxpayer or the Assessing Officer can either appear personally or can appear through an authorized representative.
- The Commissioner of Income-tax (Appeals) would hear the appeal and may adjourn the appeal from time-to-time.
- Before passing the order, the Commissioner of Income-tax (Appeal) may make such further inquiries as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result to him.
- During the course of appeal, the Commissioner of Income-tax (Appeals) may allow the taxpayer to go into additional grounds of appeal [Additional grounds means grounds which are not specified in Form no. 35]. However, additional grounds will be accepted only if the Commissioner of Income-tax (Appeals) is satisfied that omission of these grounds from the form of appeal was not willful or unreasonable.

3.9. Filing of additional evidences

During the appeal proceedings before the Commissioner of Income-tax (Appeals), the taxpayer is permitted to produce only those evidences (whether oral or documentary) which were produced by him before the Assessing Officer. In other words, the Commissioner of Income-tax

(Appeals) will not permit the taxpayer to produce any additional evidences which were not produced by him before the Assessing Officer.

However, in following circumstances additional evidence will be accepted by the Commissioner of Income-tax (Appeals)

- (a) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
- (b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to be produced by the Assessing Officer; or
- (c) Where the appellant was prevented by sufficient cause from producing any evidence before the Assessing Officer which is relevant to any ground of appeal; or
- (d) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
 - Normally, the taxpayer has to make an application for acceptance of additional evidences. In other words, the additional evidences are to be accompanied with an application stating the reasons for their admission.
 - On receipt of such an application, the Commissioner of Income-tax (Appeals) may admit the same after recording reasons in writing for the admission of these evidences.
 - Before taking into account the additional evidence filed by the taxpayer, the Commissioner of Income-tax (Appeals) has to provide a reasonable opportunity to the Assessing Officer for examining the additional evidence or the witness, as well as to produce evidences to rebut additional evidences produced by the taxpayer.

3.10. Decision of the Commissioner of Income-tax (Appeals)

- After hearing the case/arguments, the Commissioner of Income-tax (Appeals) will pass his order. The order will be in writing. The order will be passed for disposal of the appeal and will state the decision on each ground of appeal along with reasons.
- In case of an appeal against the assessment order the Commissioner of Income-tax (Appeals) may confirm, reduce, enhance or annul the assessment (including assessment in respect of which proceedings before the Settlement Commission abates).
- However, if such an appeal is against an order of assessment made under section 144, JCIT (Appeals) may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment. (effective from 01-10-2024)

- In case of an appeal against the penalty order the Commissioner of Income-tax (Appeals) may confirm, reduce or enhance the penalty.
- Before enhancing any assessment or penalty, the Commissioner of Income-tax (Appeals) has to provide a reasonable opportunity to the taxpayer to present his case against such enhancement.
- While disposing of an appeal, the Commissioner of Income-tax (Appeals) may consider and decide any matter arising out of the proceedings in which order appealed against was passed, even if such matter was not raised by the taxpayer before the Commissioner of Income-tax (Appeals).

3.11. Disposal of appeal

Where it is possible, the Commissioner of Income-tax (Appeal) shall dispose off the appeal within a period of one year from the end of the financial year in which appeal is filed. The order should be issued within 15 days of last hearing. (Instruction No. 20/2003 [file no. 279/Misc 53/ 2003- ITJ], Dated 23.12.2003).

3.12. Faceless Appeal [detailed reading of the Faceless Appeal Scheme, 2021, students are advised to visit <https://www.incometaxindia.gov.in/Pages/faceless-scheme.aspx>]

Following amendments have been made by the Finance Act, 2020 in section 250 of the Income Tax Act, 1961 which deals with the appeals before CIT (Appeals) to provide for the legal basis to the Faceless Assessment Scheme. In section 250 of the Income-tax Act, the sub-sections 6(B) has been inserted as under:

“(6B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by:

- (a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

I. Notification of the Scheme of Faceless Appeals

Accordingly, the Central Government has notified the Scheme called the Faceless Appeal Scheme, 2020 vide CBDT Notification No. 76/2020 and No.77/ 2020 dated 25.09.2020 to provide



for e-appeal and for the online hearing and disposal of appeals related to income-tax disputes by the Commissioner (Appeals). This scheme shall become effective from 25.09.2020 and shall apply to all the pending appeals and any further new appeals filed under the Income Tax Act. CBDT has further notified the Faceless Appeal Scheme 2021, effective from 28-12-2021. The new scheme is notified in supersession of the earlier Faceless Appeal Scheme, 2020. Under Faceless Appeals, all Income Tax appeals will be finalised in a faceless manner under the faceless ecosystem.

Under the Faceless Appeals, everything from e-allocation of appeal, e-communication of notice/questionnaire, e-verification / e-enquiry to e-hearing and finally e communication of the appellate order, the entire process of appeals will be online, dispensing with the need for any physical interface between the appellant and the Department. There will be no physical interface between the taxpayers or their counsel/s and the Income Tax Department.

II. File Appeal

A taxpayer can file an appeal through his registered account on the Income Tax e-filing portal. All notices, letters and orders are issued using unique Document Identification Number (DIN) through electronic mode only.

A. Form – 35 USER Manual:

(I) **Overview:** Form 35 is available for use to any assessee / deductor aggrieved by an order of the Assessing Officer (AO). In such a case, the appeal can be filed against the order of the AO before the Joint commissioner (Appeals) or Commissioner of Income Tax (Appeals) using Form 35. e-filing of Form 35 has been made mandatory for persons for whom e-Filing of return of income is mandatory. For persons for whom e-Filing of Return of Income is not mandatory, Form 35 can be filed either in electronic form or paper form. An appeal is required to be filed along with Memorandum of Appeal, Statement of facts and the Grounds of appeal and should be accompanied by a copy of the order appealed against and the notice of demand.

(II) Prerequisites for availing this service

- Registered user on the e-Filing portal with valid user ID and password
- PAN and Aadhaar are linked (Recommended)
- Valid Digital Signature Certificate (DSC) registered on the e-Filing portal, which is not expired, if the Return of Income is required to be verified using DSC. In any other case, EVC is required.

(III) **Form at a Glance:** Form 35 has nine sections that you need to fill before submitting the form. These are: Basic Information, Order against which Appeal is filed, Pending Appeal, Appeal Details, Details of Taxes Paid, Statement of facts, Grounds of Appeal and additional evidence, Appeal filing details, Attachments, Form of Verification

(IV) Navigating the E-Filing Process for Form 35

Preparation Phase

Mandatory for Electronic Filers: Applicable to those mandated to file income tax returns electronically.

Authorized Verification: Verification must be done by an individual authorized under section 140 of the Act.

Step-by-Step E-Filing Guide

1. Log In: Access your account on the Income Tax E-Filing Portal.
2. Initiate Filing: Navigate to e-File -> Prepare and Submit Online Form (Other than ITR). Input your PAN, select Form 35, and choose the appropriate assessment year.
3. Digital Signature: Opt for the Digital Signature Certificate (DSC) type and register it on the portal.
4. Form Completion: Diligently fill in the details in the designated sections.
5. Document Attachments: Ensure all necessary documents are attached to substantiate your appeal.

Critical Elements of Form 35:

Instructions: Guidelines for accurately filling out the form.

Form-35 Section: Pre-filled with basic information, requires detailed inputs elsewhere.

Verification Section: For the individual associated with the registered DSC.

Attachments: Include mandatory and optional documents, with a total size cap of 50MB, in PDF or zip format.

Attachments & Character Limits: Facts of the Case: Up to 10,000 characters, Grounds of Appeal: 4,000 characters per ground. Issues in Appeal/Additions to Income: 2,000 characters

(V) Mandatory Attachments:

- Appeal Fee Challan: Proof of payment for the mandatory appeal fee, a crucial component without which the appeal may not be processed.
- Order Appealed Against
- Notice of Demand
- Detailed grounds of appeal and facts of the case [recommended].

(VI) **Submission Insights:** Thorough Review: Double-check for accuracy in the form and attachments, Electronic Submission: Proceed to submit the form electronically. , Confirmation Print: Keep a printed copy for your records and adhere to any physical submission protocols if applicable.

[Please download the Form 35 User Manual from - [https:// www.incometax.gov.in/ iec/ foportal/ help/ statutory - forms/ popular - form/ form35-um](https://www.incometax.gov.in/iec/foportal/help/statutory-forms/popular-form/form35-um)]

III. Scope of the Faceless Appeal Scheme

The appeal under this Scheme shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

IV. Faceless Appeal Centers

For the purposes of this Scheme, the Board set up

- i National Faceless Appeal Centre to facilitate the conduct of e-appeal proceedings in a centralised manner, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme;
- ii Appeal units, as it may deem necessary to facilitate the conduct of e-appeal proceedings, to perform the function of disposing appeal, which includes admitting additional grounds of appeal, making such further inquiry as thinks fit, directing the [National Faceless Assessment Centre] or the Assessing Officer, as the case may be, for making further inquiry, seeking information or clarification on admitted grounds of appeal, providing opportunity of being heard to the appellant, analysis of the material furnished by the appellant, , and such other functions as may be required for the purposes of this Scheme; and specify their respective jurisdiction.

V. Procedure of Conduct of Faceless Appeals

Under the newly substituted 'Faceless Appeal Scheme, 2021', the appeal of the taxpayer before the CIT (Appeal), shall be disposed of as per the following procedure, namely:

- (1) **Assignment of Appeal:** The National Faceless Appeal Centre shall assign the appeal for disposal to a Commissioner (Appeals) of a specific appeal unit through an automated allocation system;
- (2) **Communications through NFAC:** All communication between the Commissioner (Appeals) and the appellant or any other person or the Assessing Officer with respect to the information or documents or evidence or any other details, as may be necessary under this Scheme shall be through the National Faceless Appeal Centre.

(3) Assignment of Appellate Proceedings: On assignment of an appeal, the Commissioner (Appeals):

- (a) May condone the delay in filing appeal if the appeal is filed beyond the time permitted under [Section 249](#) of the Act and record the reasons for such condonation or otherwise in the appeal order passed by him;
- (b) Shall through the NFAC give notice to the appellant asking him to file his submission within the date and time specified in such notice and also send a copy of such notice to the Assessing Officer either directly or through the NFAC, as the case may be;
- (c) May through the NFAC obtain such further information, document or evidence from the appellant or any other person, as the case may be;
- (d) May through the NFAC obtain a report of the Assessing Officer either directly or through the NFAC, as the case may be, on grounds of appeal or information, document or evidence furnished by the appellant;
- (e) May, through the NFAC, request the Assessing Officer directly or through the NFAC, as the case may be, for making further inquiry under [Section 250\(4\)](#) of the Act and submit a report thereof;
- (f) Shall, through the NFAC serve a notice upon the appellant or any other person, as the case may be, or the Assessing Officer directly or through the NFAC, as the case may be, to submit such information, document or evidence or report, as the case may be, as may be specified by the Commissioner (Appeals) or relevant to the appellate proceedings, on a specified date and time;

(4) Response to Notice: The appellant shall file a response against the notice received. The NaFAC/AO shall furnish a report in response to the notice within the specified time or extended time as may be allowed based on an application made to the NFAC.

(5) Forwarding of Response to AU: The NFAC shall forward the response of the appellant or report of NaFAC/AO to the Commissioner (Appeals) in Appeal Unit (AU). However, where no response/report, as the case may be, has been filed/received, then the NFAC shall inform the Commissioner (Appeals) in AU, about the same.

(6) Raising of Additional Grounds of Appeal: The appellant may file additional grounds of appeal to the Commissioner (Appeals) through the NFAC, in such form, as may be specified by the NFAC, specifying therein the reason for omission of such ground in the appeal filed by him. The Commissioner (Appeals) in AU shall through NFAC, send the additional ground of appeal to NaFAC/AO. The NaFAC/AO shall furnish their comments to the Commissioner (Appeals) in AU through NFAC, within the specified or extended time limit.

(7) Admission or Rejection of Additional Grounds of Appeal: The Commissioner (Appeals) in AU shall, after taking into consideration the comments, if any, received from the NaFAC/AO, as the case may be,

- (a) if is satisfied that the omission of additional ground from the form of appeal was not wilful or not unreasonable, admit such ground; or
- (b) in any other case, not admit the additional ground, for reasons to be recorded in writing in the appeal order passed by him.

The NFAC shall intimate the admission or rejection of the additional ground to the appellant.

(8) Submission of Additional Evidence: The appellant may furnish additional evidence to the Commissioner (Appeals) through the NFAC, in such form as may be specified by the NFAC, specifying therein how his case is covered by the exceptional circumstances specified in sub-rule

(1) of Rule 46A. The Commissioner (Appeals) in AU shall, through NFAC, send the additional evidence to NaFAC/AO, for furnishing a report on the admissibility of additional evidence in accordance with Rule 46A of the Rules. The NaFAC/ AO shall furnish their remand report to the Commissioner (Appeals) in AU through NFAC, within the specified or extended time limit.

Before taking into account the additional evidence, the Commissioner (Appeals) in AU shall provide an opportunity to the NaFAC/AO to examine such evidence or to cross-examine witnesses produced by the appellant or to produce any evidence or document or any witness in rebuttal. Accordingly, the NFAC shall serve a notice to the NaFAC/AO.

The NaFAC/AO may request the Commissioner (Appeals) in AU through NFAC to direct the production of any document or evidence by the appellant or the examination of any witness. Based on the examination, the NaFAC/AO shall furnish the report to the Commissioner (Appeals) in AU through NFAC.

Accordingly, the Commissioner (Appeals) in AU, shall serve a notice to the Appellant through NFAC. NFAC shall send the appellant's response to such notice to the Commissioner (Appeals) in AU.

(9) Admission or Rejection of Additional Evidence: The Commissioner (Appeals) in AU may, after considering the additional evidence furnished by the appellant and the remand report, if any, furnished by the AO/NaFAC, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing, and the same shall form a part of the appeal order passed by him.

(10) Enhancement of assessment/penalty/reduce the amount of refund: Where the Commissioner (Appeals) in AU intends to enhance assessment or reduce the amount of refund, then he shall prepare a show-cause notice containing the reasons for such proposed action and send such show-cause notice to the appellant through NFAC.



The appellant shall, within the specified or extended time, furnish his response to the NFAC. The NFAC shall send the appellants' response to the Commissioner (Appeals) in AU. In case a response is not received, the NFAC shall inform about the same to him.

(11) Passing of the Final Appeal Order: The Commissioner (Appeals) shall, thereafter:

- (a) prepare in writing, an appeal order in accordance with the provisions of [Section 251](#) of the Act, stating the points for determination, the decision thereon and the reason for decision; and
- (b) send such order after signing the same digitally to the NFAC along with the details of the penalty proceedings, if any, to be initiated therein;

(12) Communication of Final Appeal Order: The NFAC shall, upon receipt of the final appeal order,

- (a) communicate such order to the appellant;
- (b) communicate such order to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per sub-section (7) of [section 250](#) of the Act;
- (c) communicate such order to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act;
- (d) where initiation of penalty has been recommended in the order, serve a notice on the appellant calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act.

The appeal may be transferred at any stage of the appellate proceedings, if considered necessary, by an order in accordance with [Section 120](#) of the Act, to such Commissioner (Appeals) as may be specified in the order.

VI. No personal appearance in the Appeal Centres or Units & Vested Right of Personal Hearing through Video Conferencing

- (1) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this scheme before the income-tax authority at the National Faceless Appeal Centre or appeal unit set up under this Scheme.
- (2) The appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the Commissioner (Appeals), through the National Faceless Appeal Centre, under this Scheme.

- (3) The concerned Commissioner (Appeals) shall allow the request for a personal hearing and communicate the date and time of the hearing to the appellant through the National Faceless Appeal Centre.
- (4) Such hearing shall be conducted through video conferencing or video telephony, including the use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.
- (5) Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) under this Scheme, exclusively through video conferencing or video telephony, including the use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.
- (6) The Board shall establish suitable facilities for video conferencing or video telephony, including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the appellant, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such appellant or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end.

VII. Penalty proceedings to be initiated by same Commissioner (Appeals): The Commissioner (Appeals) has been authorized to send a notice to the appellant through the NFAC to initiate any penalty proceedings. The same Commissioner (Appeals) who has completed the appeal proceedings is authorized to conduct penalty proceedings.

VIII. No exemption from paying tax in case of a non-filer of return: Proviso to Section 249(4)(b) provides that where an assessee has not filed the return of income, the CIT(A) shall not admit appeal unless an amount equal to the advance tax payable by him has been paid. However, for good and sufficient reasons recorded in writing, the CIT(A) may exempt the assessee from the requirement of payment of such tax.

Orders passed by Commissioner (Appeals) to be digitally signed: Under the new Faceless Appeal Scheme, all the orders (appeal order, penalty order, or rectification order) shall be signed digitally by the Commissioner (Appeals) before sending to National Faceless Appeal Centre.



APPEAL TO THE INCOME TAX APPELLATE TRIBUNAL

4. Introduction

The Commissioner of Income-Tax (Appeals) is the first appellate authority and the Income Tax Appellate Tribunal (ITAT) is the second appellate authority. Appeal to the ITAT can be filed by any of the aggrieved party either by the taxpayer or by the Assessing Officer.

The ITAT is constituted by the Central Government and functions under the Ministry of Law. ITAT consists of two classes of members – Judicial and Accountant. In this part you can gain knowledge about various provisions relating to appeals to the ITAT.

4.1. Appealable orders in case of appeal by the taxpayer

A taxpayer can file an appeal to the ITAT in respect of following orders:

- Rectification order passed by the Commissioner of Income-Tax (Appeals) under section 154; or
- Order passed by the Commissioner of Income-Tax (Appeals) under section 250, section 270A, section 271, section 271A, section 271AAB, section 271AAC, section 271AAD, section 271J or section 272A; or
- Order passed by a Joint Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271AAC, section 271AAD or section 271J; or
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 12AA or Section 12AB (it relates to registration application made by a charitable or religious trust).
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 80G(5)(vi) (it relates to approval of a charitable trust for donations made to it which would be eligible for deductions in the hands of the donor).
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 263 (it relates to revision of the order of Assessing Officer which is considered as prejudicial to the interest of revenue).
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 154 for rectification of order.

- An order of penalty passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 270A, under section 271 or under section 272A
- An order passed by a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director of Income-tax under section 263 (it relates to revision of the order of Assessing Officer which is considered as prejudicial to the interest of revenue).
- An order passed by a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director of Income-tax under section 154 for rectification of order.
- An order of penalty passed by a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director of Income-tax under section 272A.
- An order passed by the Assessing Officer under section 115VZC(1) (i.e., order of excluding the taxpayer from tonnage tax scheme).
- An order passed by the Assessing Officer under section 143(3) or under section 147 or under section 153A or under section 153C in pursuance of the direction of Dispute Resolution Panel or a rectification order passed under section 154 in respect of such order.
- An order passed by the Assessing Officer under section 143(3) or under section 147 or under section 153A or under section 153C with the approval of the Principal Commissioner of Income-Tax or Commissioner of Income-Tax as referred to in section 144BA(12) (i.e., assessment after invocation of General Anti-avoidance Rules) or an order passed under section 154 or under section 155 in respect of such order (applicable from 01-04-2016).
- An order passed by the Commissioner of Income-tax (Exemption) under section 10(23C)(vi) or Section 10(23C)(via) [it relates to filing of application by educational institute or hospital (other than those which are wholly or substantially financed by the Government or whose aggregate annual receipt do not exceed Rs. 1 Cr.) for the purpose of grant of exemption under section 10(23C)(vi) or section 10(23C)(via), respectively.]
- An order passed by the Commissioner of Income-tax (Exemption) under section 10(23C)(iv). It relates to approval of a charitable institution or fund for exemption under section 10(23C)(iv) having regard to its objects and its importance throughout India or throughout any State or States.

- An order passed by the Commissioner of Income-tax (Exemption) under section 10(23C)(v). It relates to granting exemption under section 10(23C)(v) to any trust (including any other legal obligation) or institution formed wholly for public religious purposes or wholly for public religious and charitable purposes.

4.2. Appealable orders in case of appeal by the Commissioner

If the Principal Commissioner of Income-Tax or Commissioner of Income-Tax objects to the order passed by the Joint Commissioner of the Income-tax (Appeals) or the Commissioner of Income-Tax (Appeals) under section 154 or section 250, then he may direct the Assessing Officer to make an appeal to the ITAT against the orders of the Commissioner of Income-Tax (Appeals). This is called as departmental appeal, i.e., the Income-Tax department moving to ITAT against the order of the Joint Commissioner of Income-tax (Appeals) or the Commissioner of Income-Tax (Appeals).

The departmental appeal shall be allowed only in cases where the tax effect involved in the appeal exceeds Rs. 50,00,000. In other words, the Commissioner of Income-Tax can direct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) only in those cases in which the tax effect exceeds Rs. 50,00,000 [refer Circular No. 17/2019, Dated 08-08-2019].

4.3. Appeal not to be filed by the department in certain cases

- (a) The Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) in those cases in which the tax effect does not exceeds Rs. 50,00,000
- (b) “Tax effect” means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed Issues”). However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.
- (c) The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every taxpayer. If in the case of a taxpayer the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified above. No appeal shall be

filed by department in respect of an assessment year or years in which the tax effect is less than the monetary limit specified above.

- (d) In other words, henceforth, appeals can be filed by Commissioner of Income-tax only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed.
- (e) In case where a composite order/judgment involves more than one taxpayer, each taxpayer shall be dealt with separately.
- (f) Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified above or there is no tax effect.
 - (i) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
 - (ii) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultravires, or
 - (iii) Where Revenue Audit's objection in the case has been accepted by the Department.
 - (iv) Writ matters
 - (v) Matters pertaining to other direct taxes, i.e., other than Income-Tax
 - (vi) Where the tax effect is not quantifiable or not involved, such as case of registration of trust or institution under section 12A.
 - (vii) Where the addition relates to undisclosed foreign assets/bank accounts.

4.4. Time- limit for presenting appeal

- Appeal to ITAT is to be filed within a period of 60 days from the date on which order sought to be appealed against is communicated to the taxpayer or to the Principal Commissioner of Income-Tax or Commissioner of Income-Tax (as the case may be).
- The ITAT may admit an appeal even after the period of 60 days if it is satisfied that there was sufficient cause for not presenting the appeal within the prescribed time.
- With effect from 01-10-2024, appeal before ITAT shall be filed within 2 months from the end of the month in which the order sought to be appealed against is communicated to the taxpayer or to the Principal Commissioner of Income-Tax or Commissioner of Income-Tax (as the case may be).



4.5 Form and signature

The appeal to ITAT shall be filed in Form No. 36. In case of appeal by the taxpayer, the form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under section 140. In other words, the Form of appeal is to be signed by the following persons:

- (i) In case of appeal by the individual taxpayer, by the individual taxpayer himself or by a person duly authorised by him who is holding a valid power of attorney
- (ii) In case of a Hindu Undivided Family by the Karta of the family or if Karta is absent from India or is not capable for signing, by any other adult member of such family.
- (iii) In case of a company by the Managing Director or if Managing Director is not available or where there is no Managing Director by any director of the company.
- (iv) In case of a firm by the Managing Partner or if Managing Partner is not available or where there is no Managing Partner by any partner (not being a minor)
- (v) In case of a LLP by the Designated Partner or if Designated Partner is not available or where there is no Designated Partner by any partner.
- (vi) In case of a Local Authority by the Principal Officer thereof
- (vii) In case of a Political Party by the Chief Executive Officer of such party
- (viii) In case of any other Association by the Principal Officer thereof or by any member of the Association.
- (ix) In case of any other Person by that Person or by some person competent to act on his behalf.

4.6. Form of appeal and memorandum of cross-objections to Appellate Tribunal

- Form No. 36 - in triplicate.
- Order appealed against - 2 copies (including one certified copy).
- Order of Assessing Officer - 2 copies
- Grounds of appeal before first appellate authority [i.e., Commissioner of Income- Tax (Appeals)] - 2 copies.
- Statement of facts filed before first appellate authority [i.e., Commissioner of Income- Tax (Appeals)] - 2 copies.
- In case of appeal against penalty order – 2 copies of relevant assessment order.

- In case of appeal against order under section 143(3), read with section 144A - 2 copies of the directions of the Joint Commissioner under section 144A.
- In case of appeal against order under section 143, read with section 147 - 2 copies of original assessment order, if any.
- Copy of challan for payment of fee.

Where the appellant desires to refer to any documents or evidence he is permitted to file the same with Tribunal in the form of a paper book within one month from the date of filing the appeal. Though the prescribed period in one month, it will be preferable to file the same along with the appeal. Where an appellate order by the Commissioner [Appeals] is passed as a consolidated order for a number of years, appeals to the Tribunal shall be filed separately for each year.

On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT. A memorandum of cross-objections to the Appellate Tribunal shall be made in Form No. 36A and where the memorandum of cross-objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross-objections and the form of verification appended thereto shall be signed by the person specified

4.7. Memorandum of cross objection

- On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT.
- The memorandum of cross objection is to be filed within a period of 30 days of receipt of notice. The memorandum of cross objection is to be filed in Form No. 36A.
- There is no fee for filing the memorandum of cross objection. The ITAT may accept a memorandum of cross objection even after the period of 30 days if it is satisfied that there was sufficient cause for not submitting the same within the prescribed time.
- Person who is competent to sign Form 36 (i.e., form of appeal) has to sign and verify the memorandum of cross objections. The ITAT will dispose of the memorandum of cross objections like an appeal in Form 36.

4.8. Fees for filing the appeal

Where assessed income (means total income as computed by the Assessing Officer).	
up to Rs. 1,00,000	Rs. 500
more than Rs. 1,00,000, but up to Rs. 2,00,000	Rs.1000
more than Rs. 2,00,000 [As amended by Finance Act, 2020]	1% of assessed income subject to a maximum of Rs. 10,000
Fees for filing the appeal in other cases	
Where application is under section 254(2)	Rs. 50
Where subject-matter of appeal relates to any other matter	Rs.500
Where application is for stay of demand Rs.	Rs.500
Where Appeal is filed u/s 253(2)or a memorandum of a Cross objection referred u/s 253(4)	Nil

4.9. Submission of paper book

- The appellant or the respondent, i.e., the opposite may submit a paper book.
- A paper book is to be submitted in duplicate and should contain documents or statements or other papers referred to in the assessment order or the appellate order on which appellant/respondent wants to rely.
- The paper book should be duly indexed and page numbered. It should be filed at least a day before the hearing of the appeal. It should be filed along-with the proof of service of copy of the paper book to the opposite party at least a week before. Each paper in the paper book is to be certified as true copy by the party filing the same.
- The delay in filing the paper book may be condoned in genuine cases of delay.
- The ITAT can also on its own direct the preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal.
- Additional evidence, if any, should be filed separately and should not form part of the paper book.

4.10. Hearing of the appeal by the ITAT

- The ITAT will fix the date of hearing along with the place of hearing the appeal and will also notify the parties.
- A copy of memorandum of appeal is to be sent to the respondent either before or along with such notice. The ITAT will hear the appeal on the date fixed. The appeal

may be adjourned on other dates and in such a case the appeal will be heard on the respective dates.

- If the appellant is called by the ITAT but fails to appear before the ITAT either in person or through an authorized representative, the appeal may be disposed of by the ITAT on merits after hearing the respondent.
- Subsequent to ex parte hearing, if the appellant appears before the ITAT and satisfies the ITAT that there was sufficient cause in his case for non-appearance before the ITAT, then set aside the ex parte order and restore the appeal. Similar procedure is applicable where appeal is disposed of in the absence of respondent.

4.11. Filing of additional evidence

- Filing of additional evidence before the ITAT by parties to the appeal is not permitted. In other words, additional evidence of any kind, either oral or documentary cannot be filed before the ITAT.
- However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.

4.12. Order of the ITAT

- The member of bench of the ITAT hears the appeal. After hearing the appeal the ITAT will pronounce its order and will communicate the order to the taxpayer as well as the Assessing Officer.
- Appeals are heard by a Bench comprising one judicial member and one accountant member. Appeals where total income computed by the Assessing Officer does not exceed Rs. 50 lakh may be disposed of by single member Bench.
- If the members of the Bench differ in opinion on any point, the decision is taken on the basis of majority. If members are equally divided in their opinion, the points of difference are stated by each member and the case is referred by the President of the ITAT for hearing such points by one or more of other members of the ITAT. Such point or points is decided according to opinion of majority of the members of ITAT who have heard the case, including those who first heard it.
- Normally, the Bench pronounces its orders in Court. However, where the orders are not pronounced in the Court, list of such orders showing results of appeal and signed by members is put up on the notice board of the Bench.

4.13. Disposal of appeal

Where it is possible, the ITAT shall dispose off the appeal within a period of four years from the end of the financial year in which appeal is filed.

4.14. Stay application

- The ITAT may, on an application made by the taxpayer and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under section 253(1). The stay order will be in operation for a period not exceeding 180 days from the date of such order. The ITAT shall dispose of the appeal within the said period of stay specified in that order.
- However, the stay shall be granted by the ITAT only when the assessee has 'deposited' or 'furnished security' to the extent of 20% of his tax liabilities (i.e. tax, interest, fee, penalty or any other sum payable under the provisions of this Act). [Inserted by the Finance Act, 2020, Applicable w.e.f. Assessment Year 2020 -21]
- If such appeal is not so disposed of within the period of stay specified in the order of stay, the ITAT may extend the stay period, on an application made in this behalf by the taxpayer on being satisfied that the delay in disposing of the said appeal is not attributable to the taxpayer.
- The extension of stay period can be for a further period or periods, as the ITAT thinks fit, but the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the said appeal within the period of stay so extended or allowed.
- If the appeal is not disposed off within the period allowed or within the period or periods extended, which shall not in any case exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the taxpayer.

4.15. Rectification of Appellate Order

- The ITAT may, at any time within 6 months from the end of the month in which the order was passed, rectify any mistake apparent from record, amend any order passed by it if the mistake is brought to its notice by the taxpayer or Assessing Officer.
- However, where such amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing a liability of the taxpayer, it shall not be made unless the Appellate
- Tribunal has given a notice to the taxpayer of its intention to do so and has allowed the taxpayer a reasonable opportunity.



4.16. Other Provisions: Please refer following sections.

- Provisions for avoiding repetitive appeals – Section 158A
- Procedure when in an appeal by Revenue an identical question of law is pending before Supreme Court – Section 158AA
- Procedure when an identical question of law is pending before High Court or Supreme Court – Section 158AB

E-FILE YOUR APPEAL BEFORE TRIBUNAL

1. In line with the e-Governance policy of the Government of India, Income Tax Appellate Tribunal launched E-Filing of Appeals portal for providing efficient taxpayer services.
2. You may please log on to the portal - [https://itat.gov.in/efiling/required_docs] and go to <https://itat.gov.in/efiling/help> and download following documents and refer the same while filing the appeals. E-Filing Help –
 - Click here to view/download the ITAT e-Filing Practice Note.
 - Click here to view/download the ITAT e-Filing Standard Operating Procedure (SOP).
 - Click here to view/download the ITAT e-Filing Frequently Asked Questions (FAQs).
 - Click here to view/download the Check List for filing of appeals, cross objections or applications
3. List of Documents required for e-Filing before ITAT
(Sources - https://www.itat.gov.in/efiling/show_more_enclosures)

Act: Income Tax Act, 1961	Appeal Type: Income Tax Appeal
Appeal Sub Type: Appeal against Order u/s. 250 (Arising out of Appeal u/s. 248)	
Mandatory	Optional
Form 36	Form 35
Grounds of Appeal before ITAT	Vakalatnama or Power of Attorney
Order of CIT(A) u/s. 250	Covering Letter before ITAT
Grounds of Appeal before CIT(A)	Petition for condonation of delay
Statement of Facts before CIT(A)	Affidavit in support of Condonation Petition
Limitation Certificate and Letter of Authority	

Appeals before Appellate Authority under Income Tax Act

Act: Income Tax Act, 1961	Appeal Type: Income Tax (Search & Seizure) Appeal
Appeal Sub Type: Appeal against Order u/s. 250 (Arising out of Order u/s. 158BC)	
Mandatory	Optional
Form 36	Form 35
Grounds of Appeal before ITAT	Statement of Facts before CIT(A)
Order of CIT(A) u/s. 250	Covering Letter before ITAT
Grounds of Appeal before CIT(A)	Covering Letter before CIT(A)
Limitation Certificate and Letter of Authority	Petition for condonation of delay
Tribunal Fee Challan	Affidavit in support of Condonation Petition
Order of AO u/s. 158BC	

Act: Income Tax Act, 1961	Appeal Type: Cross Objection
Appeal Sub Type: Cross Objection against appeal u/s. 253	
Mandatory	Optional
Limitation Certificate and Letter of Authority	Vakalatnama or Power of Attorney
Grounds of Cross Objection	Covering Letter before ITAT
Form 36A	Petition for condonation of delay
	Affidavit in support of Condonation Petition

Act: Income Tax Act, 1961	Appeal Type: Miscellaneous Application
Appeal Sub Type: Miscellaneous Application against Order u/s. 254(1)	
Mandatory	Optional
Limitation Certificate and Letter of Authority	Vakalatnama or Power of Attorney
Tribunal Fee Challan	Covering Letter before ITAT
Miscellaneous Application	Petition for condonation of delay
Tribunal Order u/s. 254(1)	Affidavit in support of Condonation Petition

Appeals before Appellate Authority under Income Tax Act

Act: Income Tax Act, 1961	Appeal Type: Income Tax Appeal
Appeal Sub Type: Appeal against Order u/s. 250 (Arising out of Order u/s. 143(3))	
Mandatory	Optional
Form 36	Form 35
Grounds of Appeal before ITAT	Statement of Facts before CIT(A)
Order of CIT(A) u/s. 250	Vakalatnama or Power of Attorney
Assessment Order u/s. 143(3)	Statement of Facts before ITAT
Grounds of Appeal before CIT(A)	Covering Letter before ITAT
Limitation Certificate and Letter of Authority	Petition for condonation of delay
Tribunal Fee Challan	Affidavit in support of Condonation Petition

Act: Income Tax Act, 1961	Appeal Type: Income Tax Appeal
Appeal Sub Type: Appeal against Order u/s. 263 (Arising out of Order u/s. 143(3))	
Mandatory	Optional
Form 36	Vakalatnama or Power of Attorney
Grounds of Appeal before ITAT	Statement of Facts before ITAT
Assessment Order u/s. 143(3)	Covering Letter before ITAT
Limitation Certificate and Letter of Authority	Petition for condonation of delay
Order of CIT u/s. 263	Affidavit in support of Condonation Petition
Tribunal Fee Challan	

Appeals before Appellate Authority under Income Tax Act

Act: Income Tax Act, 1961	Appeal Type: Stay Application
Appeal Sub Type: Stay Application filed u/s. 254 of the Income Tax Act, 1961	
Mandatory	Optional
Tribunal Fee Challan	Vakalatnama or Power of Attorney
Stay Application	Orders of Revenue Authorities rejecting stay of proceedings
Affidavit in support of Stay Application	Covering Letter before ITAT

Act: Income Tax Act, 1961	Appeal Type: Income Tax Appeal
Appeal Sub Type: Appeal against Order u/s. 250 (Arising out of Order u/s. 143(3)/147)	
Mandatory	Optional
Form 36	Form 35
Grounds of Appeal before ITAT	Statement of Facts before CIT(A)
Order of CIT(A) u/s. 250	Vakalatnama or Power of Attorney
Grounds of Appeal before CIT(A)	Covering Letter before ITAT
Order u/s. 143(3)/147	Petition for condonation of delay
Limitation Certificate and Letter of Authority	Affidavit in support of Condonation Petition
Tribunal Fee Challan	

Act: Income Tax Act, 1961	Appeal Type: Income Tax Appeal
Appeal Sub Type: Appeal against Order u/s. 250 (Against Levy of Penalty u/s. 234E)	
Mandatory	Optional
Form 36	Form 35
Grounds of Appeal before ITAT	Vakalatnama or Power of Attorney
Intimation u/s. 154 r.w.s. 200A (234E)	Limitation Certificate and Letter of Authority
Order of CIT(A) u/s. 250	Covering Letter before ITAT
Grounds of Appeal before CIT(A)	Petition for condonation of delay
Statement of Facts before CIT(A)	
Tribunal Fee Challan	

Act: Wealth Tax Act, 1957	Appeal Type: Miscellaneous Application
Appeal Sub Type: Miscellaneous Application against Order u/s. 24(5) of Wealth Tax Act, 1957	
Mandatory	Optional
Tribunal Order u/s. 24(5) of WT Act, 1957	Vakalatnama or Power of Attorney
Limitation Certificate and Letter of Authority	Covering Letter before ITAT
Miscellaneous Application	Petition for condonation of delay
	Affidavit in support of Condonation Petition

4. Faceless Proceedings before ITAT

- To impart greater efficiency, transparency and accountability for the purpose of disposal of appeals by the Appellate Tribunal, the Central Government make a scheme by:
 - Eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;
 - Optimizing utilization of the resources through economics of scale and functional specialization;
 - Introducing an appellate system with dynamic jurisdiction.
- The Central Government may, for the purpose of giving effect to the scheme, issue notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

APPEAL BEFORE HIGH COURT

The relevant provisions and procedures in brief as follow.

- Section 260A provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law.
- The Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the High Court against the order of the ITAT in those cases in which the tax effect does not exceeds Rs.200 lakhs (revised from Rs.100 lakhs vide CBDT Circular No.9/2024 dated.17.09.2024).

- The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be filed within 120 days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner and shall be filed in the form of memorandum of appeal precisely stating the substantial question of law involved.
- The High Court has the power to condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within the period.
- If 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, and the respondents shall at the hearing of the appeal, be allowed to argue that the case does not involve such question.
- However, the High Court may for reasons to be recorded, hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
- 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 and may award such cost as it deems fit.
- The High Court may determine any issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal on such substantial question of law.
- Where the High Court delivers a judgment in an appeal filed before it under Section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of judgment [Section 260[1A]].
- Section 260B provides that an appeal filed under Section 260A shall be heard by a bench of not less than two judges of the High Court and shall be decided in accordance with the opinion such Judges or the majority, if any. Where, however, there is no such majority, the part of law upon which they differ shall be referred to one or more of the Judges of the High Court and shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.
- The High Court also has power to stay a proceeding for recovery of demand arising out of the assessment order pending disposal of appeal.

APPEAL BEFORE SUPREME COURT

The relevant provisions and procedures in brief as follows.

- The aggrieved party is entitled to appeal to the Supreme Court against the judgment delivered by the High Court on the reference application made to it by the Tribunal [under Section 256] against an order made under Section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under Section 254 on or after that date provided the High Court certifies the case to be fit for appeal to the Supreme Court. The right of appeal is, therefore, conditional and may be availed of only if the High Court gives a certificate of such fitness.
- The Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the Supreme Court against the order of the High Court in those cases in which the tax effect does not exceeds Rs.500 lakhs (revised from Rs.200 lakhs vide CBDT Circular No.9/2024 dated.17.09.2024).
- The High Court could certify the case as a fit one for appeal and grant leave to the Supreme Court if a substantial question of law is involved or if the question is likely to come up in successive year or if the question is otherwise of great public or private importance.
- An application of fitness for appeal to the Supreme Court has to be made within 60 days from the date of High Court's judgment [under Article 132 of the Schedule to the Limitation Act, 1963]. The time required for taking a certified copy of the High Court's judgment is to be excluded in computing such period of limitation.
- If the High Court refuses to certify a case to be fit for appeal to the Supreme Court, an application may be made to the Supreme Court [under Article 136 of the Constitution] for special leave to appeal against the decision of the High Court.
- The provisions of the Code of Civil Procedure, 1908 relating to the appeal to the Supreme Court are applicable in the case of appeals under Section 261 in the same manner as they are applicable in the case of appeals from decrees of a High Court [Section 262[1]].
- Where the judgment of the High Court is changed or reversed in the appeal, effect is given to the order of the Supreme Court [Section 262[3]. The law declared by the Supreme Court is binding on all courts within the territory of India under Article 141 of the Constitution.
- On the receipt of a copy of judgment, the Appellate Tribunal has to pass such orders as are necessary to dispose of the case conformably to such judgment.
- To award the cost of an appeal is at the discretion the Supreme Court [Section 262[2]]. It would be open to the Court not to award costs even to the party which has succeeded in the appeal before it. If the Supreme Court awards costs to a party and the party has not complied with the order, a petition may be made to the appropriate High Court for

execution of the order of the Supreme Court [Section 266]. The High Court may transmit the order for execution to any court subordinate to it [Section 266].

- Section 257 enables the Appellate Tribunal to make a direct reference to the Supreme Court if the Tribunal is of the opinion that, on account of a conflict in the decision of High Court in respect of any particular question of law, it is expedient that a reference should be made directly to the highest court.

ABSTRACT OF RELEVANT PROVISIONS – APPEALS BEFORE APPELLATE AUTHORITY

Particulars / Sections	246 / 246A	254	260A	261
Appellate Authority	JCIT / CIT (A)	ITAT	High Court	Supreme Court
Time limit for Appeal related to assessment / penalty and any other case	30 days from the receipt of the order serving of demand in case assessment / penalty and in any other case service of intimation of order sought to be appealed against	2 month from the end of the month in which the order sought to be appealed against is communicated	120 days from the date of receipt of order appealed against	-
Time limit for disposal of appeal	1 Year from the end of the FY	4 Year from the end of the FY	As per Court procedure	As per Court procedure
Application of prescribed Form	35	36	As per Court procedure	As per Court procedure
Fees to be Paid				
Returned Income up to Rs1 lakhs	Rs 250	Rs 500	As per Court procedure	As per Court procedure
More than 1 lac up to Rs 2 lakhs	Rs 500	Rs 1500	As per Court procedure	As per Court procedure
More than 2 lakhs	Rs 1000	1 % of income (Max 10,000)	As per Court procedure	As per Court procedure
Appeal for other than Income	Rs 250	Rs 500	As per Court procedure	As per Court procedure

MONEY LIMIT FOR FILING APPEALS BEFORE APPELLATE AUTHORITY – SEC 268A

1. Appeal shall be filed before appellate Tribunal, High Court and Supreme Court by income tax authority only where the tax effect of appeal exceeds the monetary limits as specified in the per CBDT Circular No.9/2024 dated.17.09.2024).
2. Therefore, the Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) in those cases in which the “tax effect” exceed the monetary limits stated below.

Appeal in Income tax matter	Revised Monetary Limit for Filing Appeal [w.e.f. 17th Sep 2024]
Before ITAT	INR 60,00,000
Before High Court	INR 2,00,00,000
Before Supreme Court	INR 5,00,00,000

3. “Tax effect” means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed Issues”). However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.
4. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every taxpayer. If in the case of a taxpayer the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified above. No appeal shall be filed by department in respect of an assessment year or years in which the tax effect is less than the monetary limit specified above.
5. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In case where a composite order / judgment involves more than one taxpayer, each taxpayer shall be dealt with separately.

6. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified above or there is no tax effect.
- (i) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
 - (ii) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultravires, or
 - (iii) Where Revenue Audit's objection in the case has been accepted by the Department.
 - (iv) Writ matters
 - (v) Matters pertaining to other direct taxes, i.e., other than Income-Tax
 - (vi) Where the tax effect is not quantifiable or not involved, such as case of registration of trust or institution under section 12A.
 - (vii) Where the addition relates to undisclosed foreign assets/bank accounts.

Note: due to volume few relevant provisions could not be covered in this chapter for which relevant provisions under Income Tax Act / Income Tax Rules, CBDT Circulars and Notifications etc may please be referred.

[illegible]



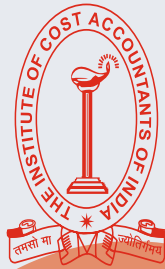
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