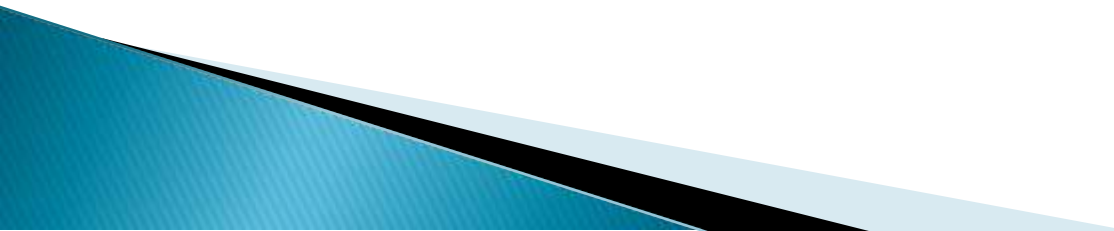


**SAMPLE DRAFT AND
DISCUSSIONS ON
HOW TO PREPARE DRAFT ON
STATEMENTS OF FACTS,
GROUNDS OF APPEAL,
HOW TO MAKE ARGUMENTS,
WHAT TO DO AND
WHAT NOT TO DO ETC.**

- ▶ SECONDARY PARAMETER AFTER RESPONSE FROM THE ASSESSMENT OR ANY OTHER ORDER ON POST ASSESSMENT EFFECT
 - ▶ MAJOR SOURCE DOCUMENTS: APPEAL AGAINST THE ASSESSMENT, TDS & TCS
 - ▶ SPECIAL SOURCE DOCUMENTS: EFFECT AFTER ASSESSMENT
 - ▶ OUTCOMES: APPEAL THEREOF
- 

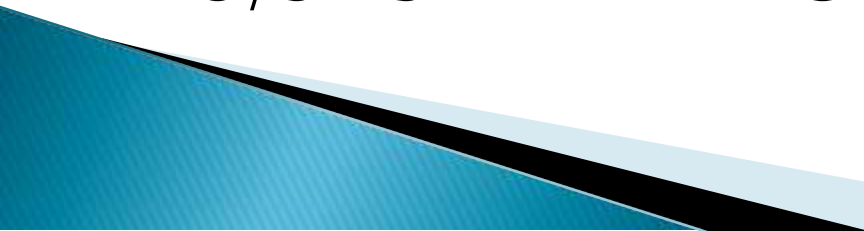
▶ U/S 143(1)/(1B) AN INTIMATION EVEN THE ASSESSEE MADE OBJECTION AGAINST ADJUSTMENTS IN RETURN OF INCOME OR STATEMENT OF TDS OR TCS

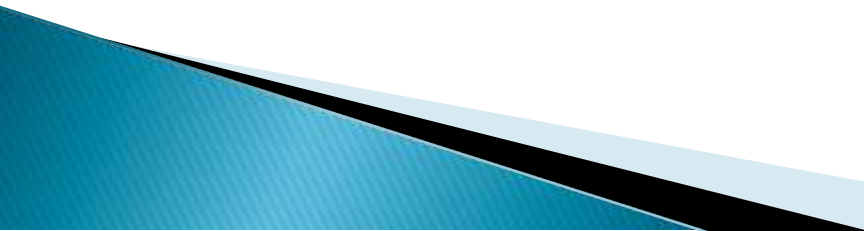
143(3) SCRUTINY ASSESSMENT

144 BEST JUDGMENT ASSESSMENT

147 INCOME ESCAPED ASSESSMENT



- ▶ U/S 153A,153C ASSESSMENT/ REASSESSMENT IN SEARCH CASES ONLY
 - ▶ U/S 92CD(3) ORDER PASSED ON MODIFIED RETURN FILLED IN ACCORDANCE WITH AND LIMITED TO THE ADVANCE PRICING AGREEMENT
 - ▶ U/S 154/155 RECTIFICATION
 - ▶ U/S 237 RELATING TO REFUNDS
- 

- ▶ U/S 270 TO 275 PENALTY ORDER UNDER CHAPTER XXI
 - ▶ U/S 201 ASSESSEE DEEMED TO BE THE ASSESSEE IN DEFAULT FOR FAILURE TO DEDUCT THE TAX ANY PAYMENT THEREOF
 - ▶ U/S 206C(6A) ASSESSEE DEEMED TO BE THE ASSESSEE IN DEFAULT FOR FAILURE TO COLLECT THE TAX ANY PAYMENT THEREOF
 - ▶ U/S 170(2)/(3) RELATING TO THE ASSESSMENT ON SUCCESSOR
- 

APPEAL IS NOT MAINTAINABLE

- ▶ ORDER PASSED U/S 197(1) (NO DEDUCTION OF TDS OR AT LOWER RATE)
- ▶ INTEREST CHARGED U/S 220(2)
- ▶ ORDER FOR REFUSAL OF STAY OF DEMAND
- ▶ NO OBJECTION IS MADE BY THE ASSESSEE AGAINST RECTIFICATION
- ▶ RECTIFICATION MADE AGAINST THE ASSESSEE'S CONSENT
- ▶ ASSESSMENT MADE ON AGREED CONSENT

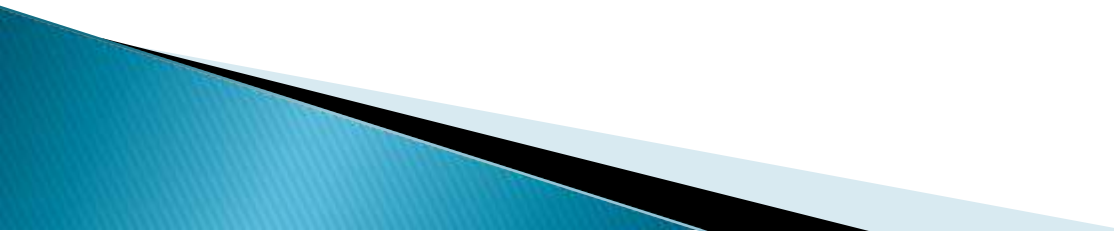
▶ ELEMENTS OF STATEMENT OF FACTS

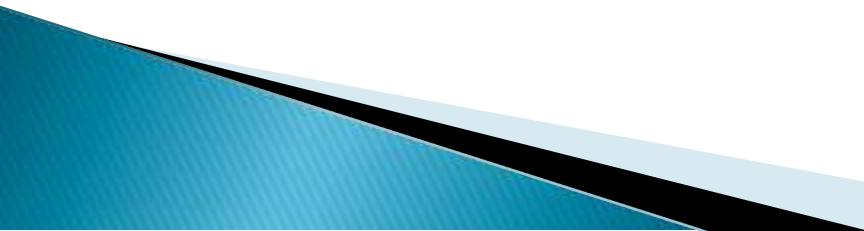
- ▶ 1. NATURE OF ACTIVITIES AND THE DESCRIPTION OF THE OPERATION
- ▶ 2. GENERAL DESCRIPTION SINCE THE VERY CORE POINT OF THE INITIATION I.E. SINCE THE FILING OF ROI
- ▶ 3. FACTS LEADING TO THE ENHANCEMENT OF INCOME
- ▶ 4. FACTS LEADING TO THE DISALLOWANCES OF EACH EXPENSES OR LOSSES
- ▶ 5. ISSUES RAISED BY THE ASSESSING OFFICER ON EACH ITEM OF ADDITION OR ENHANCEMENT

- ▶ 5. Reference of submission made before
▶ Assessing Officer;

 - ▶ 6. Reference of documents filed in support of
▶ submission;

 - ▶ 7. Summary of finding of Assessing Officer;

 - ▶ 8. Despite of observations of Assessing
▶ Officer with reasons for Rebuttal.
- 

- ▶ **ELEMENTS OF STATEMENT OF GROUNDS**
 - ▶ 1. ISSUEWISE REASONS
 - ▶ 2. GROUNDS SHOULD BE SIMPLE, CONCISE
 - ▶ ANY SPECIFIC
 - ▶ 3. GROUNDS SHOULD BE BRIEF AND WITHOUT
 - ▶ ANY KIND OF ARGUMENT
 - ▶ 4. PRINCIPLE OF NATURAL JUSTICE MUST BE
 - ▶ SPECIFICALLY TAKEN IN THE GROUNDS OF
 - ▶ APPEAL – VERY FIRST SPECIFIC GROUND
- 

- ▶ **Points to be kept in mind while drafting the Grounds of Appeal**

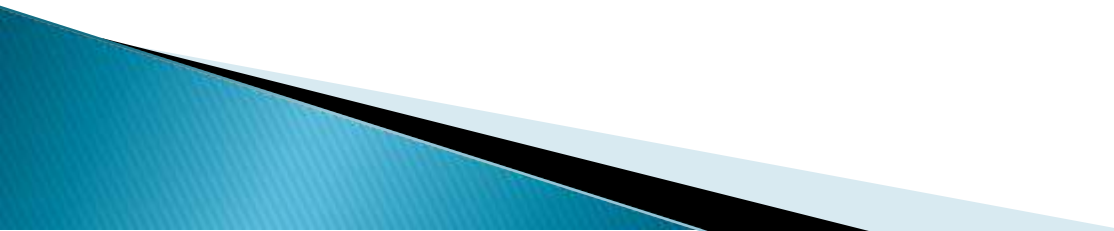
- ▶ **(i) ALL THE CAUSES FOR GRIEVANCE NEED TO BE INCLUDED IN THE GROUNDS**

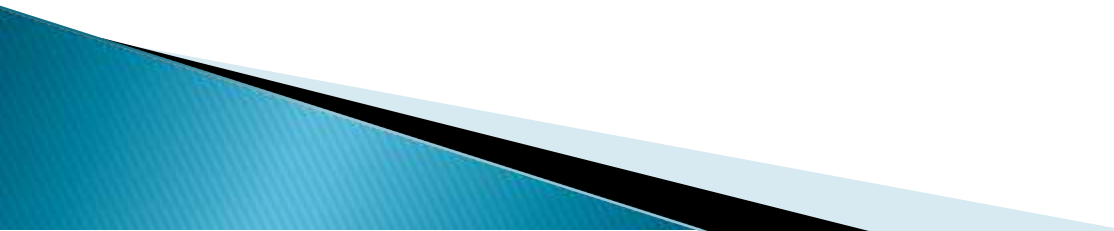
- ▶ All the causes for grievance need to be included in the grounds. E.g. even if an assessee is aggrieved by the addition and the chances of success are limited on account of factual weaknesses or legal interpretation, the assessee should take that ground. A common example is reopening of assessment. The powers of assessing authority to reopen the assessment are now substantially wide.


- ▶ However, the law on the subject is continuously
- ▶ evolving and it may so happen that at the time that the appeal is fixed, an interpretation of law in favour of the
- ▶ assessee may be available. It is, therefore, advisable to include and highlight all controversies involved and all
- ▶ the grounds on which the assessee is aggrieved. They should not be vague or general in nature.

- ▶ **(ii) GROUNDS SHOULD BE SIMPLE, CONCISE ANY SPECIFIC**
- ▶ Ground of appeal should be simple, clear, precise, concise, specific and without any ambiguity. Grounds should
- ▶ avoid repetition. In the grounds of appeal, the assessee must only state the cause of grievance and avoid using
- ▶ long sentences. One has to strike the right balance between grounds being adequately clear without any
- ▶ significant matter being omitted and yet concise. But the grievance to be raised must not be left out.

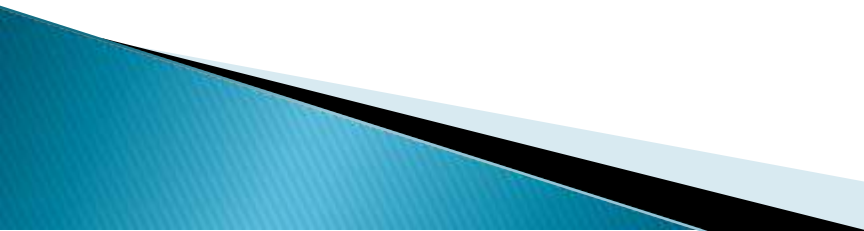
▶ (iii) GROUNDS MUST BE BRIEF AND AVOID ARGUMENTS

- ▶ Nature of dispute and relief expected should be clearly mentioned and highlighted. The grounds must be brief
 - ▶ and should not be argumentative. A ground of appeal is in fact nature of a claim thus it is distinguished from
 - ▶ arguments because arguments are made in support of claim. There may be several arguments in support of a
 - ▶ claim and all the arguments cannot form ground of appeal
- 

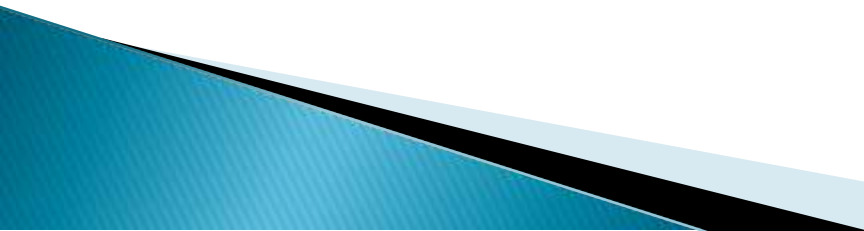
- ▶ **(iv) GROUNDS SHOULD NOT CONTAIN INTEMPERATE LANGUAGE**
 - ▶ **(v) ISSUES SUCH AS LACK OF PROPER OPPORTUNITY OF BEING HEARD OR VIOLATION OF ANY OTHER PRINCIPLE OF NATURAL JUSTICE MUST BE SPECIFICALLY TAKEN IN THE GROUNDS OF APPEAL – VERY FIRST SPECIFIC GROUND**
- 

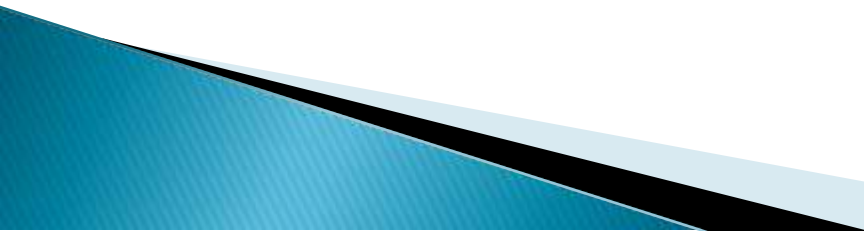
- ▶ Issues such as lack of proper opportunity of being heard or violation of any other principle of natural justice
 - ▶ (such as denial of opportunity of cross examination, relying on material behind assessee's back etc.) must be
 - ▶ specifically brought out. In case the time limit for the compliance is very short or if further opportunity as should
 - ▶ be given was not provided or in case copies of statements recorded, even asked for, were not provided or when
 - ▶ the books were in the custody of the department without being available either at the time of return or hearing or
 - ▶ there is any other non-observance of principles of natural justice, all these or any of them can be stressed as a
- 

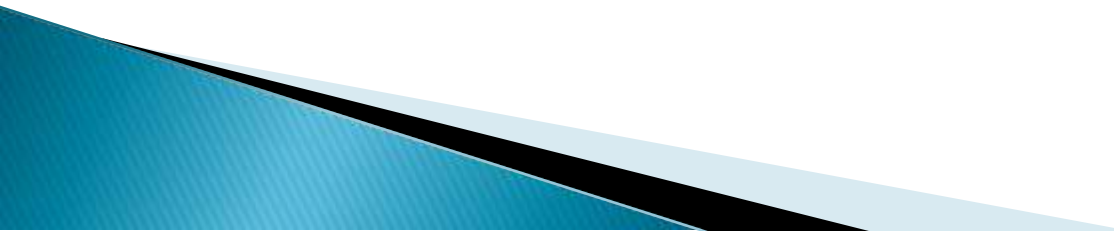
- ▶ preliminary ground. In case opportunity of being heard is not granted to the assessee, the same should be clearly
- ▶ mentioned in grounds. Not providing an opportunity to the appellant, should specifically be mentioned in the
- ▶ statement of facts as well as in the grounds of appeal. It can be taken as an independent ground in the grounds
- ▶ of appeal. This will also help the assessee's case for admission of additional evidence under Rule 46A of the
- ▶ Income-tax Rules, 1962, if required.
- ▶ As lack of opportunity is a ground relating to jurisdiction, therefore, if possible it should be taken as the very
- ▶ first specific ground.

- ▶ **(vi) GROUNDS MUST BE SERIALY NUMBERED**
 - ▶ Grounds must be serially numbered and if an assessee is aggrieved by the addition for 2 or 3 reasons, the ground
 - ▶ should be divided into sub-clauses. For example - a particular disallowance may be erroneous for 2 or 3
 - ▶ different reasons, and those 2 or 3 different reasons may be stated by way of sub-clauses
- 

- ▶ **(vii) SEPARATE GROUND FOR EACH ADDITION/ ISSUE MUST BE TAKEN**
 - ▶ In case of more than one issue involved in appeal, draft one separate ground for one issue and preference of
 - ▶ grounds should be decided.

 - ▶ **(viii) AVOID REFERRING CASE LAW WHILE DRAFTING GROUNDS, IF ANY**
 - ▶ Grounds should not refer case law unless binding decisions
- 

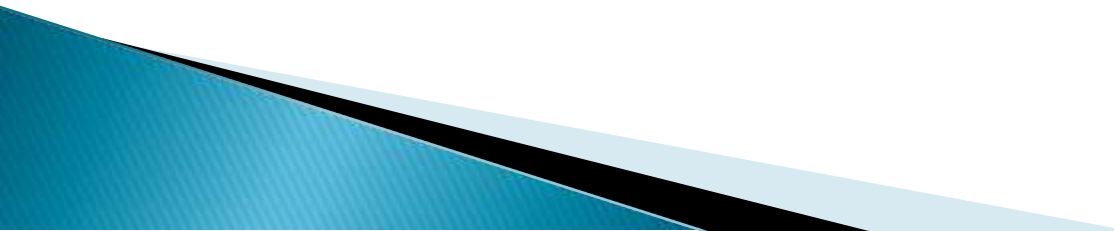
- ▶ **(ix) ALL GROUNDS ARE REQUESTED TO BE DEALT WITH**
 - ▶ The Appellate Authority is bound to deal with all the grounds taken by the assessee. Where objection is taken against the jurisdiction of the Assessing Officer, it has to be dealt with.
 - ▶ It should be decided as a preliminary
 - ▶ issue before embarking on the merits of the controversy. It is desirable that both jurisdiction and merits are decided, where both are contested, though it would ordinarily not be necessary to deal with merits, if jurisdiction is lacking. All the same, a second round is avoided, in case the objections against the jurisdiction are found to be
 - ▶ not maintainable.
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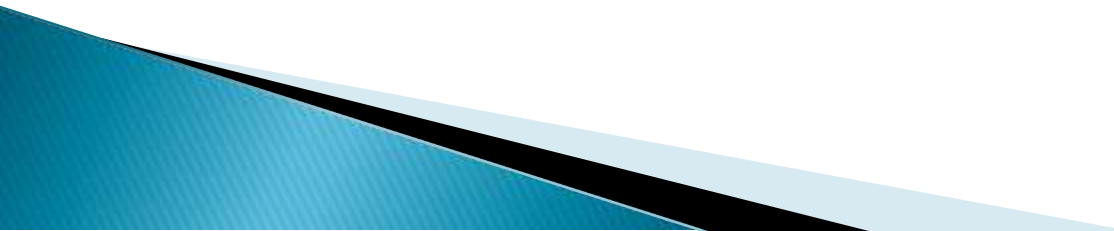
- ▶ **(x) ALTERNATIVE PLEA, WITHOUT PREJUDICE GROUNDS**
 - ▶ Alternative plea, without prejudice grounds must be taken, where the circumstances so require;
- 

- ▶ **Grounds of Appeal could be:**
- ▶ **FACTUAL GROUNDS:**
- ▶ For example: Method of accounting, available records etc.

- ▶ **LEGAL GROUNDS:**
- ▶ For example: Misinterpretation of law, jurisdictional grounds etc.

- ▶ **GROUND OF PROCEDURAL VIOLATIONS (TECHNICAL GROUNDS):**
- ▶ For example: Notice served beyond limitation, notice not served , Invalid notice , Violation of Principles of natural justice, Inadequate hearing etc.

- ▶ **Specimen draft of Grounds of Appeal**
 - ▶ Grounds of appeals should be drafted in logical sequences and be numbered properly. The first ground should be
 - ▶ a general ground – Income assessed and Income declared. In the last ground, crave, leave for addition,
 - ▶ modification, substitution or withdrawal of grounds of appeal. A specimen draft of grounds of appeal is as under:—
- 

- ▶ **(1) FIRST GROUND TO BE GENERAL,
CHALLENGE THE ENTIRE PROCEDURE OR
PARTIAL PROCEDURE**
 - ▶ **Since initiation of notice U/s 143(2),142(1)
others,**
 - ▶ **Reassessment Proceedings**
 - ▶ **Reasons for U/s 263/264**
 - ▶ **Search assessment U/s 125,153A,153C**
 - ▶ **Entertainment U/s 144**
- 

- ▶ “That on the facts and in the circumstances of the case and in law, the Assessing Officer has erred in framing the
- ▶ assessment under section 147 of the Act, without following the mandatory procedure prescribed under sections
- ▶ 147 to 151 of the Act. As such, the assessment may please be held as bad in law and additions made thereon may
- ▶ kindly be deleted.”
- ▶ That the Ld. Assessing Officer has erred on facts and in law in reopening of the assessment by invoking the
- ▶ provisions of section 147 of the Income Tax Act when no fresh facts or material were available to the assessing
- ▶ authority after the completion of the assessment under section 143(3) of the Act.

- ▶ **(2) SECOND GROUND AGGREGATE ADDITIONS:**
- ▶ “That the appellant denies his liability to be assessed at total income of against returned income of
- ▶ and accordingly denies his liability to pay tax and interest demanded thereon”.
- ▶ OR
- ▶ “That on the facts and in the circumstances of the case and in Law, the Ld. Assessing Officer has erred in
- ▶ assessing the income of the appellant at, instead of returned. As such Aggregate
- ▶ additions of may please be deleted”.
- ▶ “That having regard to the facts and circumstances of the case, Ld. Assessing Officer has erred in law and on
- ▶ facts in making above the additions and disallowance without giving an adequate opportunity of being heard and by not observing the principles of natural justice , or

- ▶ That the conclusion and inferences of the Assessing Officer are based on suspicious, conjectures, surmises and
- ▶ extraneous and irrelevant consideration


▶ (3) PRINCIPLES OF NATURAL JUSTICE

- ▶ That having regard to the facts and circumstances of the case, the Ld. Assessing Officer has erred both on facts
- ▶ and in law in deciding the appeal *ex parte* in violation of the principles of natural justice and without granting to
- ▶ the assessee a fair, proper and meaningful opportunity and the findings of the Ld. Assessing Officer that the
- ▶ assessee is not serious and sincere to pursue the case is wholly incorrect and in disregard of the fact that there
- ▶ was reasonable cause for alleged non-compliance on the dates fixed for hearing.
- ▶ OR
- ▶ “That having regard to the facts and circumstances of the case, Ld. Assessing Officer has erred in law and on
- ▶ facts in making above the additions and disallowance without giving an adequate opportunity of being heard and by not observing the principles of natural justice”

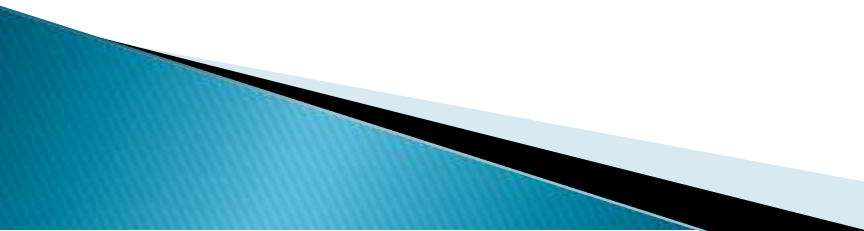
▶ (4) SPECIFIC GROUNDS


▶ SECTION 41(1)

- ▶ “That having regard to the facts and circumstances of the case, the Ld. Assessing Officer has erred on facts and
- ▶ in law in making addition of under section 41(1) of the Act in contravention of the provisions of the section
- ▶ without appreciating the fact that ledger account statement submitted by the assessee of the creditor
- ▶ M/s..... for the F.Y..... relevant to assessment year has not
- ▶ been contradicted by either the creditor and the Assessing Officer merely because such liabilities are outstanding
- ▶ for the last many years, it cannot be presumed that the said liabilities have ceased to exit”.

- ▶ **(5) REVENUE EXPENSES TO BE CAPITAL IN NATURE**
 - ▶ “That having regard to the facts and circumstances of the case, the Ld. Assessing Officer has erred on facts and
 - ▶ in law in making disallowance of a sum ofon account of repair and maintenance expenses holding
 - ▶ them to be capital in nature, that too without any basis and merely on the basis of surmise and conjectures and by
 - ▶ making incorrect observations and giving incorrect findings”.
- 

▶ (6) REJECTION OF BOOKS OF ACCOUNT

- ▶ “That having regard to the facts and circumstances of the case, the Ld. Assessing Officer has erred on facts and
 - ▶ in law in rejecting books of account which have been duly audited and the audit of which has not been disputed
 - ▶ by the Assessing Officer at any stage of the assessment proceedings to be invalid and legally untenable mere
 - ▶ non-filing of the details of..... cannot lead to the inference that books of account are not proper and are liable to
 - ▶ be rejected”.
- 

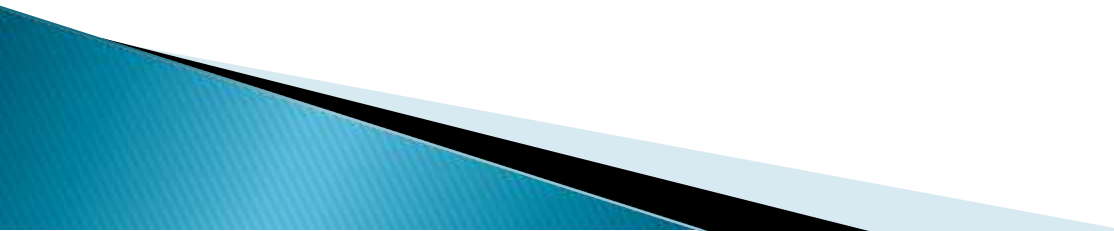
- ▶ **(7) INVOKING PROVISIONS OF SECTION 145**
 - ▶ “That having regard to the facts and circumstances of the case, the Ld. Assessing Officer has erred on facts and
 - ▶ in law in invoking the provisions of section 145 and rejected the audited accounts without pointing out any
 - ▶ specific defects or shortcomings in the audited accounts without pointing out any defect in the accounts which
 - ▶ could lead to the belief that proper profit cannot be deducted from the books of account”.
- 

▶ **(8) DIFFERENCE AS PER TDS CERTIFICATE ETC.**

- ▶ “That having regard to the facts and circumstances of the case, Learned Assessing Officer has erred on facts and
- ▶ in law in making on addition ofallegedly being difference between commission as per TDS certificate
- ▶ and commission as shown in the Profit & Loss account”.

▶ **(9) RECORDING INCORRECT FACTS & IRRELEVANT OBSERVATIONS**

- ▶ “That having regard to the facts and circumstances of the case, Ld. Assessing Officer has erred on facts and in
- ▶ law in assessing it as AOP and taxing it at maximum marginal rate and that too by recording incorrect facts and
- ▶ irrelevant observations”.

- ▶ **(10) RECORDING INCORRECT FACTS & IRRELEVANT OBSERVATIONS**
 - ▶ “That having regard to the facts and circumstances of the case, Ld. Assessing Officer has erred on facts and in
 - ▶ law in assessing it as AOP and taxing it at maximum marginal rate and that too by recording incorrect facts and
 - ▶ irrelevant observations”.
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- ▶ **(11) RESIDUARY GROUND**

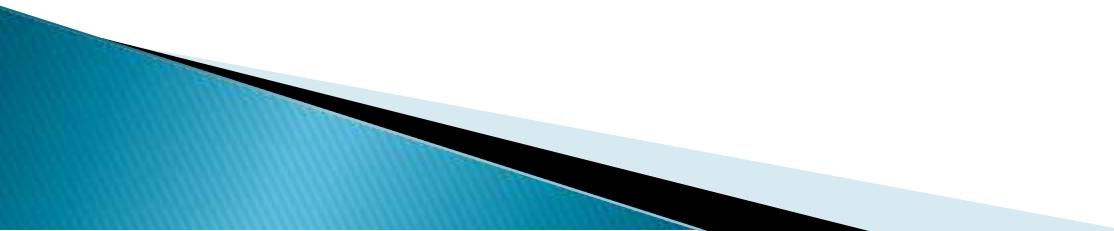
- ▶ “That the appellant craves, leave to add, alter, amend or vary and/or withdraw any or all of the aforesaid grounds of Appeal or at time of hearing of the above appeal”.

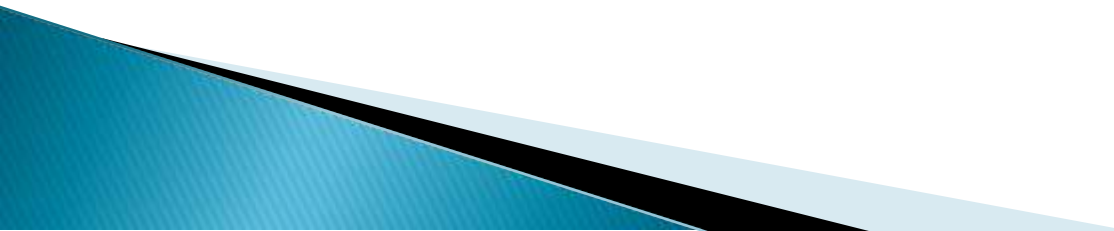
- ▶ OR

- ▶ “The Appellant craves to add, alter, delete, modify or withdraw any of the above grounds of appeal

▶ (11) OTHER MISCELLANEOUS GROUNDS

- ▶ “That the Ld. Assessing Officer has misdirected himself in law in levying penalty under **section 271(1)(c)** of
- ▶ and his order is thus *prima facie* devoid of merits and contrary to law and needs to be quashed and
- ▶ prayed for accordingly”.
- ▶ “That the aforesaid grounds of appeal are without prejudice to each other.
- ▶ “That the Appellant prays that the addition/disallowance of made in respect of/out of
- ▶ be deleted.”

- ▶ **(12) LAST GROUND CONSTITUTIONAL RIGHT**
 - ▶ In the last ground, a prayer to crave, leave for addition, modification, substitution or withdrawal of grounds of
 - ▶ appeal must be made in the end.
 - ▶ That the relief prayed for may kindly be allowed and the order of the Assessing Officer may kindly be quashed,
 - ▶ set aside, annulled or modified.
- 

- ▶ **Relevant Provisions**
 - ▶ Section 250(5)– Grounds of Appeal
 - ▶ Section 251 – Powers of CIT Appeal
 - ▶ Rules 46A – Additional Evidence which is not produced before the Assessing Authority
- 

▶ Where AO refused to admit the said evidence which ought to have been admitted

b. Where appellant was prevented by sufficient cause from producing evidence called upon by AO or relevant to any ground in appeal

c. Where appellant was prevented by sufficient cause from producing the AO any evidence which is relevant to any ground of appeal

d. Where AO made the impugned order without giving sufficient opportunity to appellant

▶ Bombay High Court in **Smt. Prabhavati S. Shah vs. CIT [1998] 231 ITR 1** – AAC should have admitted additional evidence in exercise of power u/s 250(5) as well as under Rule 46A(1)(c) considering the fact that AO had considered loan as income only on ground that summons issued to lenders were returned unserved and didn't provide opportunity to assessee during assessment proceedings

- ▶ Delhi High Court in **Chandrakant Chanu Bhai Patel 202 Taxman 262** – if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.
- ▶ **CIT vs. Manish Build Well (P) Ltd.** in ITA No. 928/2011 dt. 15.11.2011 (2011) 63 DTR 369 – after admission of additional evidence, it is mandatory to follow Rule 46A(3) of the Rule. It was found that the AO only objected the admissibility of additional evidence and restricted himself to comment on the merits of the evidence. Therefore, the Hon'ble court observes that the Id. CIT (A) did not follow the mandatory procedure for consideration of additional evidence at the first appellate stage.

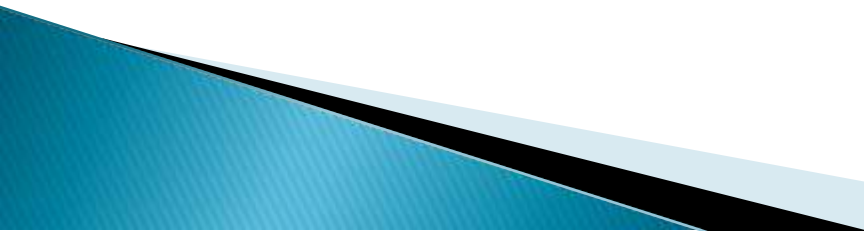
Reasons must be given for non-acceptance of additional evidence under rule 46A:-

**Abhay Kumar Shroff V/s. ITO 63 ITD 144(Pat)
Smt. Prabhavati S. Shah V/s. CIT,231 ITR 278 Collector Land
Katji 167 ITR 471 (SC)**

Where CIT (A) has called for production of any document on his own during the course of appellate proceedings, then he is not obliged to call for a remand report from AO on the said evidences. In such circumstances the revenue cannot raise the issue of violation of Rule 46A

**CIT v Surtech Hospital & Research Centre Ltd 293 ITR 53
(Bom),**

**One contrary view expressed by the Kerala High court in the
case of CIT v E. D. Benny 283 CTR (Ker) 212**

- ▶ Summarised:
 - ▶ New Evidence
 - ▶ CIT(A) send for the remand report of the A.O.
 - ▶ Copy of the said Remand report is required to be provided to the Appellant
 - ▶ The appellant will file Rebuttal against such remand report
 - ▶ Thereafter Rejoinder may be submitted by the appellant
 - ▶ Hearing of the appeal petition
 - ▶ Order reserved by the CIT(A)
- 

THANK YOU

