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## *Appeal to CIT-(A)*

*A.—Appeals to the Deputy Commissioner (Appeals) and Commissioner (Appeals)*

**246. Appealable orders. {N/A after 01/04/2000}**

**246.** (1) Subject to the provisions of sub-section (2), any assessee aggrieved by **any of the following orders** of an Assessing Officer (other than the Deputy Commissioner) may appeal **to the Deputy Commissioner (Appeals)** before the 1st day of June, 2000 against such order—

(a) an **order** against the assessee,

— where the assessee denies his liability to be assessed under this **Act**, or  
an **intimation** under sub-section (1) **or** sub-section (1B) of section 143,

— where the assessee objects to the making of **adjustments**, or  
any **order** of assessment under sub-section (3) of section 143 **or** section 144,

— where the assessee objects

- to the amount of **income** assessed, or
- to the amount of **tax** determined, or
- to the amount of **loss** computed, or
- to the **status** under which he is assessed;

(b) an order of assessment, reassessment or recomputation under section 147 **or** section 150;

(c) an order under section 154 or section 155 having the effect of

- enhancing the assessment or
- reducing a refund or

an order refusing to allow the **claim** made by the assessee under either of the said sections;

(d) an order made under section 163 treating the assessee as the **agent** of a non-resident;

(e) an order under sub-section (2) **or** sub-section (3) of section 170;

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- (f) an order under section 171;
- (g) any order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of any assessment for the assessment year commencing on or **before the 1st day of April, 1992**;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or **before the 1st day of April, 1992**;
- (i) an order under section 201;
- (j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, **1988 or any earlier** assessment year;
- (k) an order under section 237;
- (l) an order imposing a **penalty** under—
  - (i) section 221, or
  - (ii) section 271, section 271A, section 271B, section 272A, section 272AA or section 272BB;
  - (iii) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, **1988 or any earlier** assessment years.

(1A) Notwithstanding anything contained in sub-section (1),  
every appeal filed,

- on or **after** the 1st day of October, 1998 but **before** the 1st day of June, 2000,

before the Deputy Commissioner (Appeals) **and**  
any matter arising out of or connected with such appeal and which is so pending  
shall stand **transferred to** the **Commissioner (Appeals)** and the Commissioner (Appeals) may  
proceed with such appeal or matter from the stage at which it was on that day.

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(2) Notwithstanding anything contained in sub-section (1),  
any assessee aggrieved by any of the following orders

— (whether made before or after the appointed day)

may appeal to the **Commissioner (Appeals)** before the 1st day of June, 2000 against such order—

(a) an intimation or order specified in sub-section (1) where such intimation is sent or such order is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124;

(b) an order specified in clauses (a) to (e) (both inclusive) and clauses (i) to (l) (both inclusive) of sub-section (1) or

an order under section 104, as it stood immediately before the 1st day of April, 1988 in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment year made against the assessee, being a company;

(c) an order of assessment made after the 30th day of September, 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A;

(d) an order made by the Deputy Commissioner under section 154;

(da) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997;

(db) an order imposing a penalty under sub-section (2) of section 158BFA;

(e) an order imposing a penalty under section 271B or section 271BB;

(ee) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;

(f) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(ff) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

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- (g) an order imposing a penalty under Chapter XXI by the Income-tax Officer or the Assistant Commissioner where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section (2) of section 274;
- (h) an order made by an Assessing Officer (other than Deputy Commissioner) under the provisions of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(3) Notwithstanding anything contained in sub-section (1),

- the Board or
- the Principal Director General or Director General, or
- the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner if so authorised by the Board,

may, by order in writing, **transfer**

- any appeal which is pending before a Deputy Commissioner (Appeals) **and**
- any matter arising out of or connected with such appeal and which is so pending,

**to the Commissioner (Appeals) if**

- the Board or, as the case may be,
- the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner

(at the request of the appellant or otherwise) is **satisfied that** it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter, from the stage at which it was before it was so transferred:

**Provided** that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be reheard.

*Explanation.*—For the purposes of this section,—

- (a) "appointed day" means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No. 2) Act, 1977 (29 of 1977);

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(b) "**status**" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

**246A. Appealable orders before Commissioner (Appeals).**

**246A.**

(1) Any assessee or any deductor or any collector

- aggrieved by **any of the following orders** *{Exhaustive list}*
  - (whether made before or after the appointed day)
- may appeal to the **Commissioner (Appeals)**

**against—**

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP *{ refusing to approve the option for tonnage tax scheme }*

**or**

an order against the assessee

- where the assessee denies his liability to be assessed under this Act *{S 195 r/w 248}*

**or**

an intimation under

- ❖ sub-section (1) or sub-section (1B) of section 143 or *{ROI -Adjustment}*
- ❖ sub-section (1) of section 200A or *{TDS}*
- ❖ sub-section (1) of section 206CB, *{TCS}*

- where the assessee or the deductor or the collector objects to the making of adjustments,

**or**

any order of assessment under

- ❖ sub-section (3) of section 143 *{scrutiny Assessment}*
  - except** *{Matters which are referred to DRP (TP) / PC or C (Anti-Avoidance)}*
    - an order passed in pursuance of directions of the Dispute Resolution Panel **or** *{Directly Appeal to ITAT – u/s 253(1)(d)}*
    - an order referred to in sub-section (12) of section 144BA

***or***

- ❖ section 144, *{Best Judgement Assessment}*

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- to the **income** assessed, or
- to the amount of **tax** determined, or to
- the amount of **loss** computed, or
- to the **status** under which he is assessed;

*Explanation.*—For the purposes of this section,— {i.e. for section **246**}

(a) "...

(b) "**status**" **means** the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

(aa) an order of assessment under

- ❖ sub-section (3) of section 115WE or {Assessment of Fringe benefit}
- ❖ section 115WF, {BJA of Fringe benefit}

— where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab) an order of assessment or reassessment under section 115WG; {Re Assessment -Fringe benefit}

(b) an **order** of assessment, reassessment or recomputation under

- ❖ section **147** {*escapement of Income*}

**except** {*Matters which are referred to DRP (TP) / PC or C (Anti-Avoidance)*}

- an order passed in pursuance of directions of the Dispute Resolution Panel **or**
- *an order referred to in sub-section (12) of section 144BA]*

**or**

- ❖ section **150**; {*order giving effect*}

(ba) an **order** of assessment or reassessment under section **153A**

**except** {*Matters which are referred to DRP (TP) / PC or C (Anti-Avoidance)*}

- an order passed in pursuance of directions of the Dispute Resolution Panel **or**
- *an order referred to in sub-section (12) of section 144BA;*

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(bb) an **order** ~~of assessment or reassessment~~ **made** under sub-section (3) of section 92CD;

*{Effect to advance pricing agreement.}* [1st day of September, 2019]

*Amendment is consequential*

*In section 92CD(3) the words 'an order of assessment or reassessment' have been substituted in section 92CD(3) by the word 'an order'. Hence section 246A has been amended with effect from 1-9-2019 to substitute order.*

(c) an **order** made under section 154 or section 155 *{rectify mistake apparent} / {other amendments}*

having the effect of

— enhancing the assessment or

— reducing a refund or

an order **refusing** to allow the claim made by the assessee under either of the said sections

o *except an order referred to in sub-section (12) of section 144BA; {PC or C (Anti-Avoidance)}*

(d) an order made under section 163 treating the assessee as the **agent** of a non-resident;

(e) an order made under sub-section (2) or sub-section (3) of section 170; *{successor}*

(f) an order made under section 171; *{After partition of HUF}*

(g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or **before the 1st day of April, 1992;**

(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, **1992 or any earlier** assessment year;

(ha) an order made under section 201;

(hb) an order made under sub-section (6A) of section 206C;

(i) an order made under section 237;

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(j) an order **imposing** a **penalty** under—

(A) section 221; or

(B) section 271,

section 271A,

section 271AAA,

section 271AAB,

section 271F,

section 271FB,

section 272AA or

section 272BB;

(C) section 272,

section 272B or

section 273,

as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

(ja) an order of imposing or enhancing **penalty** under sub-section (1A) of section 275;

(k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of

— search initiated under section 132 or

— books of account, other documents or any assets requisitioned under section 132A

on or after the 1st day of January, 1997;

(l) an order imposing a penalty under sub-section (2) of section 158BFA;

(m) an order imposing a penalty under section 271B or section 271BB;

(n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E;



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(o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer *other than a Deputy Commissioner* under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

*Explanation.*—For the purposes of this sub-section, where on or after the 1st day of October, 1998,

— the post of Deputy Commissioner has been redesignated as Joint Commissioner and

— the post of Deputy Director has been redesignated as Joint Director,

the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but **before the 1st day of June, 2000** shall be deemed to have been filed under this section.

(1B) Every appeal filed by an assessee in default against an order under sub-section (6A) of section 206C on or after the 1st day of April, 2007 but **before the 1st day of June, 2007** shall be deemed to have been filed under this section.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:

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**Provided** that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

*Explanation.*—For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.

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**247. Appeal by partner.**

**247.** *[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]*

**248. Appeal by a person denying liability to deduct tax in certain cases.**

**248.** Where under an agreement or other arrangement,

the tax deductible on any income,

— other than interest,

under section 195 is to be borne by the person by whom the income is payable, and

such person having paid such tax to the credit of the Central Government,

claims that no tax was required to be deducted on such income,

he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

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**249. Form of appeal and limitation.**

**249.** (1) Every appeal under this Chapter

shall be in the prescribed form<sup>86</sup> and

shall be verified in the prescribed manner and

shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of,—

- (i) where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one hundred thousand rupees or less,

— two hundred fifty rupees;

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- (ii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees,
- five hundred rupees;
- (iii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees,
- one thousand rupees;
- (iv) where the subject matter of an appeal is not covered under clauses (i), (ii) and (iii),
- two hundred fifty rupees.

Assessed Income (AI) by AO	CIT Fees-u.s 249(1)		ITAT Fees –u.s 253(6)	
≤ Rs. 1,00,000	(i)	Rs. 250.	(a)	Rs. 500.
>Rs. 1,00,000 but ≤ Rs. 2,00,000	(ii)	Rs. 500.	(b)	Rs. 1500.
> Rs. 2,00,000	(iii)	Rs. 1,000.	(c)	1%*AI Rs. 10,000.
subject-matter of appeal is not covered under any of the above	(iv)	Rs. 250.	(d)	Rs. 500.
Department Appeal u/s 253(2)			PT	Nil
Memorandum of cross objection – by Assessee / Dept u/s 253(4))				
Stay of Demand			253(7)	Rs 500

(2) The **appeal** shall be presented **within thirty days** of the following date, that is to say,—

- (a) where the appeal is under section 248,
- the date of payment of the tax, or [*deny liability to TDS*]
- (b) where the appeal relates to any assessment or penalty,
- the date of service of the notice of demand relating to the assessment or penalty:

**Provided** that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on

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which the order passed on the application is served on the assessee shall be excluded,<sup>87</sup> [or]

*Reopening of assessment at the instance of the assessee.*

146. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.]

**Finance Act, 2016, w.e.f. 1-4-2017:**

**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,

**or**

(c) in any other case, the date on which intimation of the order sought to be appealed against is served.

Where the assessment order was served on a person who was not an authorized agent of the assessee and later on the assessee applied for and obtained a copy of the assessment, it was held that time limit for filing the appeal should be reckoned from the date on which the assessee obtained the copy of assessment order and notice of demand and not from the earlier date of the service of the assessment order.-CIT VS. PREM KUMAR RASTOGI (1980) 124 ITR 381 (AII)

#### **APPEAL SENT BY POST**

In a case where the appeal is sent by post, then the date of filling will be the date on which the appeal is delivered to the office of the CIT (A) and not the date on which it is handed over to the postal authorities. This is because under the general law, the post office acts as an agent of the sender and not that of addressee.

(2A) Notwithstanding anything contained in sub-section (2),

where an order has been made under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 and the assessee in default has not presented any appeal within the time specified in that sub-section, he may present such appeal before the 1st day of July, 2000.

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**(3) The Commissioner (Appeals)**

- **may** admit an appeal after the expiration of the said period
- **if** he is **satisfied** that the appellant had **sufficient cause** for not presenting it within that period.

Condonation of Delay – “sufficient cause”	CIT -u.s 249(3)	ITAT–u.s 253(5)
Appeal after period of	30 days u.s 249(2)	60 days u.s 253(3)

**(4) No** appeal under this Chapter shall be admitted**unless** at the time of filing of the appeal,—

- (a) where a return has been filed by the assessee, the assessee has **paid the tax due** on the income **returned by him**; or
- (b) where **no return** has been filed by the assessee, the assessee has **paid** an amount equal to the amount of **advance tax** which was **payable** by him:

**Provided** that, in a case falling under **clause (b) and** on an **application** made by the appellant in this behalf, the Commissioner (Appeals) **may**,

for any good and sufficient reason to be recorded in writing,

- **exempt** him from the operation of the provisions of that clause.

Income as per	Return filed	Assessed	ROI Not filed	Assessed
Nature of Tax	Self-Assessment tax	Regular Assessment Tax	Self-Assessment tax	Regular Assessment Tax
Appeal only if	Tax paid u.s 249(4)	20% as per circular 220(6)	Advance Tax Paid u.s 249(4)	20% as per circular 220(6)

**250. Procedure in appeal.****250. (1) The Commissioner (Appeals)**

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shall fix a **day and place** for the hearing of the appeal, and

shall give **notice** of the same

— to the appellant and

— to the Assessing Officer against whose order the appeal is preferred.

The proceedings in appeal are a continuation of the original proceedings.
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<b>PNJ</b> – Opportunity of being heard
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(2) The following shall have the **right to be heard** at the hearing of the appeal—

(a) the **appellant**, either **in person** or by an authorised representative;

(b) the Assessing **Officer**, either in person or by a representative.

(3) The Commissioner (Appeals) shall have the **power to adjourn** the hearing of the appeal from time to time.

(4) The Commissioner (Appeals)

— **may**, before disposing of any appeal, make such **further inquiry** as he thinks fit, or

— may **direct** the **Assessing Officer**

○ to make further inquiry and

○ **report** the result of the same to the Commissioner (Appeals).

(5) The Commissioner (Appeals) **may, at** the hearing of an appeal,

— **allow** the appellant to go into **any ground** of appeal **not specified in** the grounds of appeal,

— **if** the Commissioner (Appeals) is **satisfied** that the omission of that ground from the form of appeal was **not wilful or unreasonable**.

(6) The **order** of the Commissioner (Appeals) **disposing** of the appeal

shall be in writing *and*

shall **state**

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- the **points** for **determination**,
- the **decision** thereon and
- the **reason** for the decision.

(6A) In every appeal, the Commissioner (Appeals), **where it is possible**, **may** hear and decide such appeal within a period of **one year** from the **end of** the financial year in which such appeal is filed before him under sub-section (1) of section 246A.

This is an advisory limit and not strictly mandatory.
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**FA 2020, 1st April, 2020**

(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).

(6C) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (6B), by notification in the Official Gazette,

- **direct** that any of the provisions of this Act relating to
  - **jurisdiction and**
  - **procedure for disposal** of appeals by Commissioner (Appeals)
- shall **not apply** or
- shall apply with such exceptions, **modifications** and adaptations as may be specified in the notification:

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Provided that

→ no direction shall be issued after the 31st day of March, 2022.

(6D) Every notification issued under sub-section (6B) and sub-section (6C)

→ shall,

- as soon as may be after the notification is issued,
- be laid before each House of **Parliament**.

(7) On the disposal of the appeal, the Commissioner (Appeals) shall **communicate** the order passed by him

— to the assessee and

— to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. *{AO – cannot appeal against his own order – Hence outcome of assessee appeal is communicated to Higher authority} – See Section 253(2) – Direction to AO – to appeal to ITAT*

## **251. Powers of the Commissioner (Appeals).**

**251. (1)** In disposing of an appeal, the Commissioner (Appeals) shall have the **following powers**—

(a) in an appeal against an **order of assessment**, he may

- confirm,
- reduce,
- **enhance** or
- annul

the assessment;

(aa) in an appeal against the order of **assessment** in respect of which the proceeding before the **Settlement Commission** **abates** under section 245HA,

he may, after taking into consideration

- all the material and other information produced by the assessee before, or
  - the results of the inquiry held or evidence recorded by,
- the Settlement Commission, in the course of the proceeding before it

**and** such other material as may be brought on his record,

- confirm, reduce, **enhance** or annul the assessment;



**Mahesh Kumar L**

B.Com, M.Com, LL.B, ACA, ACS, FCWA.

**Advocate**

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- (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**.

(2) The Commissioner (Appeals) **shall not**

- enhance an assessment or a penalty or
- reduce the amount of refund

**unless** the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

PNJ

Limitation to section 251(1) → Proposal Notice u/s 251(2) – Shall be issued by CIT-(A) to enhance – if not – enhancement is invalid.

*Explanation.—*

In disposing of an appeal, the Commissioner (Appeals) may **consider** and **decide**

- **any matter arising out of the proceedings** in which the **order** appealed against was **passed**,
- **notwithstanding that such matter was not raised** before the Commissioner (Appeals) by the appellant.

Difference between –

Enhancement of Assessment of AO	Discovering New source of income (not considered by AO)
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