

## APPEAL TO COMMISSIONER OF INCOME-TAX (APPEALS)

### Introduction

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).

In this part you can gain knowledge about various provisions relating to such 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)].

### 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.

#### *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 recomputation under Section 147 ;
- (a) An order being an intimation under sub-section (1) of 200A, i.e., processing of TDS statement;
- (b) An order being an intimation u/s 206CB(1), i.e., processing of TCS statement);
- (c) An order being an intimation under section 206C(6A) treating a collector of TCS as assessee-in-default;
- (d) An order under Section 201 treating a deductor as an assessee in-default;
- (e) An order imposing a penalty under Chapter XXI (Section 270A to 275); and

- (f) A rectification under Section 154 or Section 155 amending any of the orders mentioned above.

### **Fees**

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

Where assessed income (i.e. total income as determined by the Assessing Officer) is :

- Less than or equal to Rs. 1,00,000 :- Rs. 250
- More than Rs. 1,00,000 but less than Rs. 2,00,000:- Rs. 500
- More than Rs. 2,00,000:- Rs.1,000
- Where subject-matter of appeal relates to any other matter, i.e., other than above:-Rs. 250.

### **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).

### **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

### **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.

### **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).

### **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.

### **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)**

### **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:

- Order passed against the taxpayer in a case where the taxpayer denies the liability to be assessed under Income Tax Act.
- Intimation issued under section 143(1)/(1B) where adjustments have been made in income offered to tax in the return of income.
- Intimation issued under section 200A(1) where adjustments are made in the filed statement.
- Assessment order passed under section 143(3) except in case of an order passed in pursuance of directions of the Dispute Resolution Panel
- An assessment order passed under section 144.
- 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

- An order referred to in section 150.
- An order of assessment or reassessment passed under section 153A or under section 158BC in case of search/seizure.
- Order made under section 92CD(3).
- Rectification order passed under section 154 or under section 155.
- 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.
- Order passed under section 171 recording the finding about partition of a Hindu Undivided Family.
- Order passed by Joint Commissioner under section 115VP(3) refusing approval to opt for tonnage-tax scheme to qualifying shipping companies.
- 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.
- Order determining refund passed under section 237.
- 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.
- Order imposing a penalty under Chapter XXI.
- Order passed by the AO under section 239A

#### **Time-limit for presenting an appeal**

As per Section 249(2), appeal should be presented within 30 days of the following date:

- (a) Where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty.
- (b) In any other case, the date on which intimation of the order sought to be appealed against is served.

The Commissioner of Income-tax (Appeals) may admit belated application on sufficient cause being shown. Application for condonation of delay in filing the appeal, giving the reasons for the delay, along with necessary evidences should be filed with Form No. 35 (i.e., form of appeal). The Commissioner of Income-tax (Appeals) can condone the delay in filing the appeal if genuine reason exists for delay.

#### **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.

### 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:

- (1) 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
- (2) 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.
- (3) 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.
- (4) In case of foreign company, by a person who holds a valid power of attorney from such company
- (5) 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)
- (6) 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.
- (7) In case of a Local Authority, by the Principal Officer thereof
- (8) In case of a Political Party, by the Chief Executive Officer of such party
- (9) In case of any other Association, by the Principal Officer thereof or by any member of the Association.
- (10) In case of any other Person, by that Person or by some person competent to act on his behalf.

### 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.

### Documents to be submitted for appeal

- Form No. 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.
- One certified copy of order, appealed against. Notice of demand in original.
- Copy of challans of fees 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.



## Fees

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

- Where assessed income (i.e. total income as determined by the Assessing Officer) is :
  - Less than or equal to Rs. 1,00,000 :- Rs. 250
  - More than Rs. 1,00,000 but less than Rs. 2,00,000:- Rs. 500
  - More than Rs. 2,00,000:- Rs. 1,000
- Where subject-matter of appeal relates to any other matter, i.e., other than above:- Rs. 250.

## 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 (\*). 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.

(\*) Additional grounds means grounds which are not specified in Form no. 35

## 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.

#### **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).

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).

#### **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).

#### **Faceless Appeal**

The Finance Act, 2020 has authorized the Central Government to notify an e- appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability by:

- a) eliminating the interface between the CIT(A) and the appellant in the course of appellate proceedings to the extent feasible technologically;



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- b) optimising the 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 CIT (Appeals).

The Central Board of Direct Taxes (CBDT) vide Notification No. 76/2020, dated 25-09-2020 has notified the Faceless Appeal Scheme, 2020 effective from 25-09-2020.

INCOME TAX DEPARTMENT





## MCQ ON APPEAL TO COMMISSIONER OF INCOME-TAX(APPEALS)

**Q1.**The Commissioner of Income-tax (Appeals) is the \_\_\_\_\_ appellate authority.

- (a) First (b) Second  
(c) Third (d) Fourth

**Correct answer : (a)**

**Justification of correct answer :**

The Commissioner of Income-tax (Appeals) is the first appellate authority.  
Thus, option (a) is the correct option.

**Q2.**Section \_\_\_\_\_ specifies the orders against which an appeal can be filed before the Commissioner of Income-tax (Appeals).

- (a) 261 (b) 260A  
(c) 253 (d) 246A

**Correct answer : (d)**

**Justification of correct answer :**

Section 246A specifies the orders against which an appeal can be filed before the Commissioner of Income-tax (Appeals). Thus, option (d) is the correct option.

**Q3.**Where the appeal relates to any assessment or penalty, the same should be presented within 30 days from the date of service of notice of demand relating to the assessment or penalty.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

Appeal should be presented within 30 days of the following date:

- (a) Where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty.  
(b) In any other case, the date on which intimation of the order sought to be appealed against is served.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q4.**Application for condonation of delay in filing the appeal, giving the reasons for the delay along with necessary evidences should be filed in Form No. 34C.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Application for condonation of delay in filing the appeal, giving the reasons for the delay along with necessary evidences should be filed in Form No. 35 (i.e., form of appeal).

Thus, the statement given in the question is false and hence option (b) is the correct option.

**Q5.** An appeal to the Commissioner of Income-tax (Appeals) shall be filed in Form No.

- (a) 34B (b) 35  
(c) 34C (d) 28

**Correct answer : (b)**

**Justification of correct answer :**

An appeal to the Commissioner of Income-tax (Appeals) shall be filed in Form No. 35.

Thus, option (b) is the correct option.

**Q6.** In case of a Hindu Undivided Family, the form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the Karta of the family.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

In case of a Hindu Undivided Family, the form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the Karta of the family.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q7.** Copy of challans of fees paid is not required to be submitted along with the Form No. 35 (*i.e.*, a Form of appeal).

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Documents to be submitted for appeal are as follows:

- Form No. 35 (including Statement of Facts and Grounds of Appeal) - in duplicate.
- One certified copy of order, appealed against.
- Notice of demand in original.
- Copy of challans of fees.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q8.** Where assessed income (*i.e.* total income as determined in the assessment) is more than Rs. 1,00,000 but less than Rs. 2,00,000, the fees for filing the appeal before the Commissioner of Income-tax (Appeals) are\_\_\_\_\_.

- (a) Rs. 250 (b) Rs. 500  
(c) Rs. 1,000 (d) Rs. 10,000

**Correct answer : (b)**

**Justification of correct answer :**

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

Where assessed income (*i.e.* total income as determined in the assessment) is :-

- Less than or equal to Rs. 1,00,000 :- Rs. 250
- More than Rs. 1,00,000 but less than Rs. 2,00,000 :- Rs. 500
- More than Rs. 2,00,000 :- Rs. 1,000
- Where subject-matter of appeal relates to any other matter, i.e., other than above: Rs. 250.

Thus, option (b) is the correct option.

**Q9.** During the course of appeal, the Commissioner of Income-tax (Appeals) cannot allow the taxpayer to go into additional grounds of appeal.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

During the course of appeal, the Commissioner of Income-tax (Appeals) may allow the taxpayer to go into additional grounds of appeal. 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 wilful or unreasonable.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q10.** The Commissioner of Income-tax (Appeal) shall dispose off the appeal within a period of \_\_\_\_\_ from the end of the financial year in which appeal is filed.

- (a) 3 months (b) 6 months  
(c) 1 year (d) 2 years

**Correct answer : (c)**

**Justification of correct answer :**

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.

Thus, option (c) is the correct option.

**Q11.** Section \_\_\_\_\_ specifies the orders against which an appeal can be filed before the Commissioner of Income-tax (Appeals).

- (a) 261 (b) 260A  
(c) 246 (d) 246A

**Correct answer : (c)**

**Justification of correct answer :**

Section 246 specifies the orders against which an appeal can be filed before the Joint Commissioner of Income-tax (Appeals).

Thus, option (c) is the correct option.