

Notes on Assessment and Appeals

Income Tax Assessment

Filing income tax return is a yearly ritual. Once every year, everyone has to file an income tax return. Every taxpayer whose income is above the basic exemption limit has to file in details related to his income and deduction. This is done by self-calculation of the amount of income earned in the past financial year and paying tax accordingly.

Income Tax Assessment in India

After an assessee has filed his details, it goes into processing. The Income Tax Department analyses all the details that a taxpayer submits. This is Income Tax Assessment. In simpler words, the examination of the details submitted by a taxpayer (in their income tax return) is called Income Tax Assessment. Income Tax Assessment is a post filing procedure. Once a taxpayer has filed his income tax return, they go through each and every detail of it.

Self-Assessment under Section 140 A

The process of calculating the income and payment of tax, when done by the taxpayer himself, is called Self-Assessment. At the time of paying the tax, a taxpayer can calculate his income of the year and pay the tax accordingly. Self-Assessment is covered under Income Tax Act - Section 140A.

After a provisional assessment has already been done. Any amount unpaid should be paid towards the provisional assessment or regular assessment.

Section 140 A states that if a taxpayer has filed a return under Section 139, and the tax amount is reduced due to tax already paid, then the assess should pay the balance tax within 30 days of filing the return.

Scrutiny Assessment under Section 143(3)

In some cases, after filing an income tax return, an Income Tax Officer is assigned for assessment. He is appointed by the Income Tax Department and is done when a case does not satisfy certain criteria. When a tax assessment is undertaken by an Income Tax Officer, it is his duty to inform the taxpayer. This is done through an Income Tax Notice under Section 143(2). Thereafter, the Income Tax Officer may demand certain information, documents and account books for scrutiny assessment. Income Tax Officer conducts a thorough examination of the documents and then computes the income tax payable by the taxpayer. If there is a mismatch disparity between the income amount and the tax due to be paid, the taxpayer could agree to pay the extra amount, or accept the refunds.

If the taxpayer is not satisfied, he can apply for recitation under Section 154. Otherwise, a revision application can also be submitted under Section 263 or Section 264. If the order approved in Scrutiny Assessment is still considered invalid, the taxpayer can take things to the higher authorities. Like CIT (A), ITAT, High Court and The Supreme Court, in that particular order.

Best Judgement Assessment under Section 144

Best Judgement Assessment is issued for those individuals who fail to co-operate with the Income Tax Department. This simply means that the taxpayer does not respond to the multiple notices issued by the Income Tax Department. Or he fails to produce the requested information or does not maintain proper account books. In such cases Best Judgement Assessment is put into action.

The Best Judgement Assessment is made by an Income Tax Officer in the following cases:

- There is no filing of Income Tax Return by the taxpayer
- The taxpayer fails to carry out the written requests made by the Income Tax Department regarding the filing of Income Tax Return or maintain book of accounts
- When a Scrutiny Assessment is put into action, the taxpayer fails to produce relevant documents
- If the Income Tax Officer is not satisfied by the information or documents presented by the taxpayer

After the assessee's argument is heard, the income tax officer passes an order and this is known as Best Judgement Assessment.

Income Escaping Assessment under Section 147

It is possible that a taxable income might have escaped assessment. In cases like this, the Income Tax Department can open an assessment. They can do it for cases as old as 6 years.

If an Income Tax Officer has enough information to believe that an income has escaped assessment, he can assess or reassess the taxpayer's income. To do this, he needs to issue a notice under Section 148.

Conditions under which Income Escaping Assessment is carried out are:

- If the taxpayer has failed to file an income tax return for his taxable income
- After filing the return, it is found that the taxpayer has deeply understated his income or requested excessive allowance or deduction
- When the assessee has failed to produce reports on international transactions

The duration for which Income Escaping Assessment is carried out maybe variable. It is suggested that one should approach a Chartered Accountant if they need assessment with their case.

Summary Assessment under Section 143 (1)

This Assessment is carried out digitally. Once the taxpayer has submitted all the information regarding his income in his income tax return. All this information is cross-checked with the information which is available with the Income Tax Department. Everything is done online. During online Assessment of the Income Tax Return, arithmetical errors are corrected. Besides this, incorrect claims and disallowances are automatically corrected.

If, after all the corrections, the taxpayer is required to pay income tax, then he is informed via a notice under Section 143(1).

Regular Assessment

In order to assess the information which a taxpayer has mentioned in his income tax return file, an Assessing Officer is appointed. This appointment is done by the Income Tax office. It should also be noted that the officer appointed should be at or above the rank of an Income Tax Officer. An officer checks if the taxpayer has correctly stated his income, overstated his expenses or underpaid his tax.

Regular Assessment is undertaken in the following conditions:

- When the taxpayer is liable for scrutiny assessment. It is the duty of the Income Tax Department to inform the taxpayer beforehand, prior to the advancement of the case.
- Certain documents like the book of accounts is asked to be produced by the taxpayer. On detailed examination, if the Assessing Officer feels that all details are legit, then he passes an order confirming the return filed. If that is not the case, then certain additions are made, according to need, by the Assessing Officer.

Appeals in Income Tax

APPEAL BEFORE COMMISSIONER (APPEALS)

If any demand is raised by the Assessing Officer in the assessment, what's the next step for Assessee. Aggrieved tax payer can file appeal before the Commissioner (Appeals) having, jurisdiction over the tax payer. Designation of the Commissioner (Appeals), with whom appeal is to be filed is also mentioned in the notice of demand issued by the Assessing Officer under section 156 of Income Tax Act.

WHEN APPEAL CAN BE FILED BEFORE COMMISSIONER (APPEALS), i.e. APPEALABLE ORDERS:

- Order against tax payer where the tax payer denies liability to be assessed under Income Tax Act;
- Intimation issued under Section 143(1) making adjustments to the returned income ;
- Scrutiny assessment order u/s 143(3) or an ex-parte assessment .order u/s 144, to object to income determined or loss assessed or tax determined or status under which assessed,
- Order u/s 115WE/115WF/115WG assessing fringe benefits;
- Re-assessment order passed after reopening the assessment u/s 147/150;
- Search assessment order u/s 153A or 158BC;
- Rectification Order u/s 154/155;
- Order u/ s 163 treating the taxpayer as agent of a nonresident;
- Order passed u/s 170(2)/(3) assessing the successor to the business in respect of income earned by the predecessor;
- Order u/s 171 recording finding about partition of Hindu undivided family(HUF);

- Order u/s 115VP(3) refusing approval to opt for tonnage-tax scheme by qualifying shipping companies;
- Order u/s 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee in default on failure to deduct/ collect tax at source or to pay the same to the Government;
- Order determining refund u/s 237;
- Order imposing penalty u/s 221/271 /271A/271AAA/271F/271FB/272A/272AA/272BB/275(1A)/158BFA(2)/271B/271BB/271C/271CA/271D/271E

APPEAL BEFORE INCOME TAX APPELLATE TRIBUNAL

Tax payer can file appeal before the Income Tax Appellate Tribunal against the following orders:

- Order by Commissioner(Appeals) u/s 250/154/271/271A/272A;
- Order by Assessing Officer u/s 158BC(c) in respect of search action initiated during 30.6.1995 to 1.1.1997;
- Order by Assessing Officer u/ s 115 VZC excluding the tax payer from tonnage tax scheme;
- Order by Commissioner u/s 12AA on registration application by a charitable or religious trust;
- Order by the Commissioner u/s 80G(5)(vi) regarding approval of a charitable trust for donations made after 31.3.92;
- Order by Commissioner u/s 263 revising Assessing Officer's order considered prejudicial to the interest of revenue;
- Order by Commissioner u/s 154 to rectify an order u/s 263;
- Penalty order passed by Commissioners u/s 271 or section 272A;
- Penalty order passed by Chief Commissioner/ Director General/Director u/s 272A;
- Order passed by Assessing Officer u/s 143(3)/147 in pursuance of direction of Dispute;

APPEAL BEFORE HIGH COURT

Appeal against Appellate Tribunal's order lies with the High Court, Where the High Court is satisfied that the case involves a substantial question of law. Appeal to the High Court against Appellate Tribunal's order can be filed by the tax payer or the Chief Commissioner/Commissioner within 120 days of receipt of the order and in the form of memorandum of appeal, precisely stating the substantial question of law involved. If the High Court is satisfied that a substantial question is involved, it would formulate that question. High Court hears the appeal only on the question of law so formulated; however, the respondents can argue at the time of hearing that case does not involve such question of law. Appeal filed before High Court is heard by bench of not less than two Judges and decision is by majority.

APPEAL BEFORE SUPREME COURT

Appeal against High Court's order in respect of Appellate Tribunal's order lies with the Supreme Court in those cases, which are certified to be fit one for appeal to the Supreme Court.

Special leave can also be granted by the Supreme Court under Art. 136 of the constitution of India against the order of the High Court.