

Drafting of 'Statement of Facts' and 'Grounds of Appeal' for filing of Appeal before Commissioner of Income-tax (Appeals)

Statement of Facts and Grounds of Appeal are most important, but it observed that these are largely casually framed. Once the assessee decides to challenge the tax demand, it has to file an appeal before the CIT (A). Form No. 35 requires to set out a statement of facts along with the grounds of appeal. Poor preparation of grounds of Appeal may result in a good case being lost. Ground of appeal represent the those issues which show the nature of the dispute between the assessee and the revenue. Before the actual representation of matters before the CIT (A), comes the stage of filing of the appeal i.e. the Statement of Facts and Grounds of Appeal, a step which does not get the deserved attention from assesseees. In many cases, it is observed that the Statement of Facts is not filed before the CIT (A) or is filed in a cursory manner. The Statement of Facts and Grounds of Appeal before CIT (A) are the vital documents when appeals are filed before the Income-tax Appellate Tribunal (the "Tribunal") and High Court. This is because in appeals before the Tribunal or the High Court, Statement of Facts and Grounds of Appeal taken before the CIT (A) compulsorily form part of the record before them.

Before the Tribunal, Statement of Facts cannot be filed. Therefore, it may not be possible for assesseees to bring out new facts on record in its favour unless the same have been duly so brought latest before the first appellate authority. Furthermore, bringing out certain additional facts directly before the Tribunal may result in the matter being remanded back to the lower authorities, resulting in delay.

It is through the Grounds of Appeal before the CIT (A) that an assessee can bring out that a particular point was raised before the lower authorities. Therefore, assesseees must file a detailed and comprehensive Statement of Facts and Grounds of Appeal before the CIT (A). Generally the statement of facts and grounds of appeal are drafted in third person.

Statement of facts

The Statement of Facts should be comprehensive and complete. It must be used as an opportunity to bring additional facts on record if the same could not have been so brought before the Assessing Officer. All factual mistakes/ errors/ incorrect observations of Assessing Officer must be specifically mentioned, challenged and rebutted. This would include instances where the Assessing Officer has wrongly stated in the assessment order that certain details were called for and not submitted. Wherever possible, the correct position should be expressly mentioned.

According to Rule 45(2) of the [Income Tax Rules, 1962](#), form of appeal should accompany grounds of appeal, statement of facts and the form of verification. All the facts necessary for ground should be prepared in details and summary of the case on each ground should be prepared.

Contents of statement of facts

- (a) General introduction of case;
- (b) Facts leading to each additions;
- (c) Issues raised by Assessing Officer on item of addition;
- (d) Reference of submission made before Assessing Officer;
- (e) Reference of documents filed in support of submission;
- (f) Summary of finding of Assessing Officer;
- (g) Despite of observations of Assessing Officer with reasons.

Points to be kept in mind while drafting the Statement of Facts:**(i) STATEMENT OF FACTS SHOULD BE PREPARED CAREFULLY**

It is vital for the assessee to present the statement of facts (SOF) in first appeal in such a manner so as to bring out clearly the steps in the assessment/Penalty proceedings leading to the order under challenge.

(ii) ALL FACTS SHOULD BE FREE FROM ANY CONTRADICTIONS

All facts should be free from any contradictions. Summary of all the relevant facts should be attached in parts giving facts with important evidences independently or in the form of paper book. All these facts must be true as the saying goes "Every man has a right to his opinion but no one has a right to be wrong on facts".

The general clause about the assessee sufficient enough to understand about the assessee's business and the grounds of appeal should be part of the preamble.

(iii) STATEMENT OF FACT SHOULD BE CLEAN AND NOT COLOURED BY OPINION

The statement of fact should however be clean and not coloured by opinion as coloured facts may back track on the taxpayer. The most important thing is that the facts must be truthful as no other thing is as important as the facts.

(iv) GROUND WISE STATEMENT OF FACTS

Ground wise statement of facts should then be submitted alongwith the citations of the case laws which are relied upon

(v) STATEMENT OF FACTS SHOULD NOT BE MIXED WITH GROUNDS OF APPEAL**(vi) Do not use special characters. ('-' , '/' , '@' , '&' etc.)**

Ground of Appeal

It is important to remember that the purpose of filing an appeal is to get redressal in regard to the perceived injustice. If this objective is to be achieved it is necessary to ensure that the grievance is properly communicated to the appellate authority. Making dramatic claims and bringing in irrelevant factors such as the social or economic status of the assessee, or the benefits society derives from his actions may serve no purpose. This is on account of the fact that the appellate proceedings under the tax laws are well structured. Therefore, if the cause of grievance i.e. the grounds are not stated properly at the time of filing of appeal, the arguing counsel would face substantial difficulty. More importantly the issue to be decided by the appellate authority is specifically the grounds of appeal raised by the appellant. If the grounds are not clear and precise it is difficult for the appellate authority to formulate and thereafter to adjudicate upon a proposition of law. One must keep in mind that even though oral representation is made before the CIT (Appeals) and the Tribunal, what remains as a matter of record is the written representation, and therefore, it is necessary that due care is taken in drafting.

Most important part of the appeal

Ground of appeal represent the those issues which show the nature of the dispute between the assessee and the revenue. A ground of appeal is in fact nature of a claim thus it is distinguished from arguments because arguments are made in support support of claim. There may be several several arguments arguments in support support of a claim and all the arguments cannot form ground of appeal.

Drafting of Grounds of Appeal

It is most important part of the appeal. Ground of appeal represents those issues which show the nature of the dispute between the assessee and the revenue. 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.

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..

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 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”.

(2) LEGAL GROUNDS [Eg: MISINTERPRETATION OF LAW, JURISDICTIONAL GROUNDS etc.]

“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.

(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) DISALLOWANCES BASED ON THE PAST HISTORY OF THE CASE

“That having regard to the facts and circumstances of the case, the Ld. Assessing Officer erred on facts and in law in making disallowances purely on the past history of the case without bringing any fresh material on record to give a finding as to their disallowance in a new and fresh manner”.

(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) HOLDING 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”.

(9) STAFF WELFARE EXPENSES

“That the Ld. Assessing Officer has apparently erred on facts and in law in making disallowance/addition at out of staff welfare expenses incurred only for the purpose of business, even when its details are contained in the vouchers”.

(10) 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”.

(11) 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”.

(12) REOPENING OF CASE

“That he Ld. Assessing Officer has erred in reopening the case of the appellant under section 148 of the Income Tax Act, 1961 and hereby making an assessment under section 147 read with section 143(3) of the Income-tax Act”.

(13) ALWAYS TAKE A 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”.

(14) 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.”

(15) LAST GROUND

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.