

**Statement Of Facts and Grounds Of Appeal
are documents in an appeal preferred by an
aggrieved assessee before the
Copmmissioner of Income-tax (Appeals).**

An Aggrieved assessee can prefer an appeal before the Commissioner of Income-tax (Appeals) against the orders listed in section 246 and 246A.

The said orders are generally known as 'appelable orders'. Every appeal should be made in the prescribed form as per the provisions of section 249.

The prescribed form is Form No.35 as prescribed under Rule 45 of Income-tax Rules, 1992.

The form is generally known as 'Memorandum of Appeal'.

The appeal should be filed with the Commissioner [hereafter the word 'commissioner' is used for Commissioner of Income-tax (appeals)] within 30 (Thirty) days from the date of service of demand notice where the appeal relates to any assessment or penalty.

Similarly the 30 days time limit is fixed in respect of appeals in other matters also.

Refer Section 249.

The memorandum of appeal (Form No.35) should be accompanied with

- (1) Challan for payment of appeal fee (Please see section 249 for the prescribed fee)**
- (2) Two Certified copies of the order of the assessing officer against which the appeal is preferred (assessment order, penalty order or any other order)**
- (3) Demand Notice in Original i.e. the form No.35 should be accompanied with Original Demand Notice.**
- (4) Statement of Facts (in duplicate)**
- (5) Grounds of Appeal (in duplicate) The form No.35 is also to be filed in duplicate.**

A Court Fee Stamp worth Rs.2/- has to be affixed to one of the Forms No.35. Form No.35 is to be verified by the assessee in the manner prescribed.

Persons who can sign a return of income can also sign the Form No.35. Please see section 140.

Discussions on the statement of facts.

Generally the statement of facts and grounds of appeal are drafted in third person.

In the statement of facts a brief discussion about the assessee (here in the appeal he/she is called appellant).

After briefing about the appellant the facts about grievance of the appellant are stated.

Assume that the assessee is an Individual.

During the previous year relevant to the assessment year 2019-20 the assessee has borrowed a sum of Rs.50, 000/- which has not been accepted by the assessing officer and added the same to the returned income.

The same assessee has also made certain cash payments exceeding the limits prescribed u/s 40A which have been disallowed by the assessing officer.

The business of the assessee is that of a Civil Contractor.

Now the following are the Statement of Facts and Grounds of Appeal.

STATEMENT OF FACTS

The appellant is an Individual carrying on the business as a Civil Contractor for the last several years. He has filed his return of income declaring a total income of Rs.4,50,000/-. The return of income has been processed u/s 143(1) accepting the returned income. Subsequently the case has been selected for scrutiny. The assessment has been completed determining the total income at Rs.6,00,000/- against the returned income of Rs.4,50,000/-.

While doing so the assessing officer has made the following additions/disallowances.

(1) Rs,50,000/- loan borrowed by the assessee from Mr.----- on the plea that the lender is not having sufficient income to lend the said money to the appellant.

(2) Rs.50,000/- payment made to various individual labourers which payment is made to the group leader of the labourers who in turn made the payment to the individual labourers.

During the course of assessment proceedings a letter from Mr.--- is filed wherein he confirmed that he has lent the said money partly out of his savings of agricultural income and partly amount received from his son who is a software engineer and working in New York, the USA.

The lender has submitted a copy of his Farmer's Pass Book, Pattadar Pass Book and also a receipt from the rice mill (M/s.-----) to whom he sold the paddy. He has also submitted copy of his bank pass book wherein the sums sent by his son are deposited.

He has identified the depsoits and withdrawals for the purpose of the loan given to the appelllant. The assessing officer further demanded a confirmation letter from the son the lender in the month of December, 2019.

The lender has requested his son to send a confirmation letter. Meanwhile the assessing officer completed the assessment on 20-11-2019 on the pleas that the case will be barred by time by 31-12-2019. Whereas the letter from the son of the lender reached to the appelant on 22-11-2019.

Regarding the payment of Rs.50,000/- the appellant explained that the payment is not made to a single person. It has been made to several individual persons through the group leader of the labourers.

The assessing officer has served a letter on the group leader to appear before him on 19-11-2019. The group leader could not attend on the appointed day as he has to attend a family function which is unavoidable. He has sent a telgram requesting to grant him two days time to attend.

Un fortunately the telegram has reached the the assessing officer after the officer hours on 19-11-2019.

It is against this order of assessment this appeal is being prferred with a request to delete the addition made and allow the expenditure as claimed

APPELLANT

GROUND OF APPEAL

1. The order of the assessing officer is erroneous on the facts and in the law. On the facts and in the circumstances of the case he ought to have accepted the returned income.

2. The learned assessing officer is not justified in treating the loan borrowed by the appellant as his income on the plea that a confirmation from the son of the lender is not received before the appointed day.

On the facts and in the circumstances of the case he ought to have accepted the loan as sufficient evidences have been produced such as Farmer's Pass Book, Pattadar Pass Book and Bank Pass Book of the lender alongwith with a confirmatory letter.

3. The learned assessing officer is not justified in disallowing the payments made to the labourers invoking the provisions of section 40A(3) of the Income-tax Act, 1961.

On the facts and in the circumstances of the case he has failed to appreciate the prevailing circumstances in the business of a civil contractor.

4. The learned assessing officer is not justified in not affording another opportunity to the appellant to produce a confirmatory letter from the son of the lender and also the group letter of the labour.

On the facts and in the circumstances of the case he ought not have completed the assessment hastily.

5. Any other ground or grounds as may be urged at the time of hearing.

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APPELLANT