


PROVISIONS FOR APPEAL UNDER THE INCOME TAX ACT, 1961

- ▶ SECONDARY PARAMETER AFTER RESPONSE FROM THE ASSESSMENT OR ANY OTHER ORDER ON POST ASSESSMENT EFFECT
 - ▶ MAJOR SOURCE DOCUMENTS: APPEAL AGAINST THE ASSESSMENT, TDS & TCS
 - ▶ SPECIAL SOURCE DOCUMENTS: EFFECT AFTER ASSESSMENT
 - ▶ OUTCOMES: APPEAL THEREOF
- 


▶ U/S 143(1)/(1B) AN INTIMATION EVEN THE ASSESSEE MADE OBJECTION AGAINST ADJUSTMENTS IN RETURN OF INCOME OR STATEMENT OF TDS OR TCS


143(3) SCRUTINY ASSESSMENT

144 BEST JUDGMENT ASSESSMENT


147 INCOME ESCAPED ASSESSMENT



- ▶ U/S 153A,153C ASSESSMENT/ REASSESSMENT
IN SEARCH CASES ONLY
 - ▶ U/S 92CD(3) ORDER PASSED ON MODIFIED
RETURN FILLED IN ACCORDANCE WITH AND
LIMITED TO THE ADVANCE PRICING
AGREEMENT
 - ▶ U/S 154/155 RECTIFICATION
 - ▶ U/S 237 RELATING TO REFUNDS
- 

- ▶ U/S 270 TO 275 PENALTY ORDER UNDER CHAPTER XXI
 - ▶ U/S 201 ASSESSEE DEEMED TO BE THE ASSESSEE IN DEFAULT FOR FAILURE TO DEDUCT THE TAX ANY PAYMENT THEREOF
 - ▶ U/S 206C(6A) ASSESSEE DEEMED TO BE THE ASSESSEE IN DEFAULT FOR FAILURE TO COLLECT THE TAX ANY PAYMENT THEREOF
 - ▶ U/S 170(2)/(3) RELATING TO THE ASSESSMENT ON SUCCESSOR
- 

APPEAL IS NOT MAINTAINABLE


- ▶ ORDER PASSED U/S 197(1) (NO DEDUCTION OF TDS OR AT LOWER RATE)
 - ▶ INTEREST CHARGED U/S 220(2)
 - ▶ ORDER FOR REFUSAL OF STAY OF DEMAND
 - ▶ NO OBJECTION IS MADE BY THE ASSESSEE AGAINST RECTIFICATION
 - ▶ RECTIFICATION MADE AGAINST THE ASSESSEE'S CONSENT
 - ▶ ASSESSMENT MADE ON AGREED CONSENT
- 

▶ **KEY FEATUERS:**

- ▶ BEING AGGRIEVED AGAINST THE ASSESSMENT ORDER OR ANY ORDER EXCEPT CERTAIN ORDERS

▶ **FIRST APPEAL BEFORE THE CIT(A)**

▶ **TIME LIMIT**

- ▶ 30 DAYS FROM THE DATE OF RECEIPT OF THE ORDER OR DEMAND NOTICE ;
- ▶ 30 DAYS FROM THE DATE OF SERVICE OF THE INTIMATION OR THE ORDER SOUGHT TO BE APPEALED AGAINST PAYMENT OF TAX WHERE APPEAL U/S 248;
- ▶ 30 DAYS FROM THE DATE OF PAYMENT OF TAX WHERE THE APPEAL IS U/S 248
- 

- ▶ SECOND APPEAL BEFORE THE ITAT

- ▶ TIME LIMIT FOR SECOND APPEAL
- ▶ 60 DAYS INSTEAD OF 30 DAYS

- ▶ THIRD APPEAL BEFORE THE HIGH COURT

- ▶ TIME LIMIT FOR THIRD APPEAL
- ▶ 120 DAYS INSTEAD OF 60 DAYS

- ▶ FOURTH APPEAL BEFORE THE SUPREME COURT

- ▶ TIME LIMIT FOR FOURTH APPEAL
 - ▶ 60 DAYS INSTEAD OF 120 DAYS
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SECTIONS OF APPEAL

Section 263,264, 264A & 264B

Section 246A FIRST APPEAL BEFORE THE CIT(A)

Section 253 SECOND APPEAL BEFORE THE ITAT

Section 260A THIRD APPEAL BEFORE THE HIGH COURT

Section 261 FOURTH APPEAL BEFORE THE SUPREME COURT

▶ FIRST APPEAL FEES


▶ RS.250 IF ASSESSED INCOME UPTO RS.1 LAC
OR AGAINST ANY OTHER ORDER EXCEPT
ASSESSMENT


▶ RS.500 IF ASSESSED INCOME UPTO RS.2 LAC


▶ RS.1,000 IF ASSESSED INCOME IS ABOVE RS.2
LAC




- ▶ **Relevant Provisions**
 - ▶ Section 250(5)– Grounds of Appeal
 - ▶ Section 251 – Powers of CIT Appeal

 - ▶ Rules 46A – Additional Evidence which is not produced before the Assessing Authority
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- ▶ 46A (1) The appellant shall not be entitled to produce before the Commissioner (Appeal),
 - ▶ any evidence, whether oral or documentary, other than evidence produced by him during the course of proceedings be the [Assessing Officer], except in the following circumstances, namely:–
 - ▶ Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
 - ▶ Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or
 - ▶ Where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or
 - ▶ 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.
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- ▶ (2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner] (Appeal) shall not take into account any evidence produced under sum-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity---
 - ▶
 - ▶ to examine the evidence or document or to cross-examine the witness produced by the appellant ,
or
 - ▶ to produce any evidence or document or any witness in rebuttal of additional evidence produced by the appellant.
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- ▶ Statement of Facts
 - ▶ Grounds of Appeal
 - ▶ Revision/Amendment of the grounds
 - ▶ New Evidences or Additional Evidences
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- ▶ CIT (A) may, at the time of hearing of an
 - ▶ appeal, allow the appellant to go into any
 - ▶ ground of appeal not specified in grounds
 - ▶ of appeal, if he is satisfied that omission of
 - ▶ that ground from Form of appeal was not:
 - ▶ wilful or unreasonable.
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- ▶ **Explanation to Section 251** – In disposing of an appeal, the CIT (A) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, without consideration that such matter was not raised before the CIT (A) by the appellant

Rule 46A – is not an ultra **vires–Smt. Mohinder Kaur Vs. UOI 1976 104 ITR 120(All)**


- ▶ **CIT Vs. K Ravindranathan Nair[2003} 133 Taxman 743 (Ker)**
- ▶ No opportunity to produce documents is not tenable in the eye of law – **CIT Vs. Babula Jain [1989]176 ITR 411 (MP)**
- ▶ If the related evidence are the supporting evidence of the primary evidence then the same can not be treated as fresh evidence at all if its required to prove the genuineness of the transaction. –**Ram Prasad Sharma vs. CIT (1979)119 ITR 867 (All)**
- ▶ Assessee has failed to adduce evidence in the assessment stage which was not wilful and not unreasonable will be entertained –**Rai Kumar Srimal Vs. CIT [1976]102 ITR 525(Cal)**
- ▶ **Madras High Court in M/s Ramco Cements Ltd. vs. DCIT Tax case Appeal No. 916/2014**

- ▶ – It is to be noted herein that the Act does not contain any express provision preventing the assessee from raising new grounds in appeal and there is no provision in the act restricting the Appellate Authority to entertain such new ground in the appeal.
- ▶ In the absence of statutory bar, the appellate authority is vested with the power, which is co-terminus with that of original authority, to allow the assessee to raise new ground, if same is bonafide and not willful or unreasonable

- ▶ S. 250(5) empowers CIT(A) to allow appellant to
- ▶ raise additional grounds of appeal if satisfied that,
- ▶ omission thereof was not willful or unreasonable. It
- ▶ is a discretionary power which is exercised based
- ▶ on the facts and circumstances of each case – **Jute**
- ▶ **Corporation of India Ltd. vs. CIT: 187 ITR 688 (SC)**
- ▶ Where a claim is not made in ROI, including revised
- ▶ ROI, although the AO is not empowered to allow
- ▶ such claim, the same can be raised before **CIT(A)**
- ▶ **as additional grounds of appeal –**
- ▶ – **Goetze India Ltd. v. CIT 284 ITR 323 (SC)**
- ▶ – **CIT v. Jai Parabolic Springs Ltd. 306 ITR 42 (Del.)**

- ▶ If facts not on record, additional Grounds of appeal
 - ▶ can be admitted, and matter may be set aside for
 - ▶ verification by AO –


 - ▶ **DCM Benetton India Ltd. v. CIT: 173 Taxman 283 (Del. HC);**
 - ▶ **ONGC v. Addl. CIT: ITA No. 357 & 358/Del./2005 (Del. ITAT)**
 - ▶ By when can we file the additional grounds?
 - ▶ There is no time limit to file additional grounds of
 - ▶ appeal –

 - ▶ **K.C. Khajanchi vs. UOI ITAT in C.W. No. 2164/99;**
 - ▶ **Zakir Hussain vs. CIT (2006) 202 CTR (Raj.) 40;**
- 


**CIT vs. Jindal Saw Pipes Ltd. (2010) 78 CCH
0717 Del HC –**


Authority of the CIT is coextensive with that of the AO. Moreover, section 250(5) allows the assessee to raise an issue not even forming part of the grounds of appeal. CIT(A) was therefore justified in allowing revised claim of the assessee company for deduction.


**Ramgopal Ganpatrai & Sons Ltd. vs. CIT (1953)
21 CCH 031 Mum HC –** Assessee is entitled to raise new ground which was not raised before AO, nor stated in grounds of appeal.



- ▶ **Grounds:** “That the appellant carves leave to put forth any ground and also reserves the right to add, to alter, to delete, to modify, to amend or delete any of the ground of appeal.”
- ▶ When the new evidence can be considered ?
- ▶ Error
- ▶ New points
- ▶ Summarise, if earlier was detailed and vice versa
- ▶ New Authoised Representative wants additional grounds

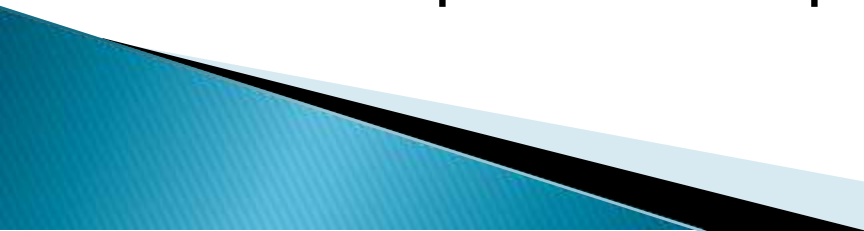
- ▶ CIT(A) can admit additional evidence or documents only after applying Rule 46A
 - ▶ Additional evidences cannot be accepted without giving a reasonable opportunity to AO to examine and rebut the said evidences
 - ▶ **When the AO objects to admission of additional evidence, then the CIT (A) should give categorical finding in terms of rule 46A for admission thereof Proper reasons must be given for non-acceptance of additional evidence under rule 46A**
 - ▶ To render justice, CIT (A) can admit new evidence
 - ▶ Additional evidence must be allowed for reasonable cause
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- ▶ It is mandatory that AO should receive the
 - ▶ additional evidences while disposing off the
 - ▶ remand report.
 - ▶ The AO may refuse to admit the additional
 - ▶ evidences in his remand report
 - ▶ In such cases, the CIT (A) can admit the
 - ▶ additional evidences by his own to render the
 - ▶ justice.
 - ▶ In case, AO refused or decline, It's the power of the CIT (A) to receive and consider the same.
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- ▶ Elements for the application for additional evidence(s):–
 - ▶ In duplicate
 - ▶ Reasons for filing additional evidence i.e. justification thereof
 - ▶ Prayer for the acceptance mentioning such portion covered under this sub Rule.
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- ▶ CIT (A) shall not take into account any additional evidence unless the AO has been allowed a reasonable opportunity:
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- ▶ to examine the evidence or document or
- ▶ to cross-examine witness produced by
- ▶ appellant
- ▶ to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant R. 46A(4) –

Nothing contained in this rule shall affect the power of CIT (A) to direct the production of any document, or examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty whether on his own motion or on the request of the AO u/s 251(1)(a) or the imposition of penalty u/s 271.



▶ Where AO refused to admit the said evidence which ought to have been admitted


b. Where appellant was prevented by sufficient cause from producing evidence called upon by AO or relevant to any ground in appeal

c. Where appellant was prevented by sufficient cause from producing the AO any evidence which is relevant to any ground of appeal

d. Where AO made the impugned order without giving sufficient opportunity to appellant



▶ Bombay High Court **in Smt. Prabhavati S. Shah vs. CIT [1998] 231 ITR 1** – AAC should have admitted additional evidence in exercise of power u/s 250(5) as well as under Rule 46A(1)(c) considering the fact that AO had considered loan as income only on ground that summons issued to lenders were returned unserved and didn't provide opportunity to assessee during assessment proceedings



- ▶ Delhi High Court in **Chandrakant Chanu Bhai Patel 202 Taxman 262** – if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.
- ▶ **CIT vs. Manish Build Well (P) Ltd.** in ITA No. 928/2011 dt. 15.11.2011 (2011) 63 DTR 369 – after admission of additional evidence, it is mandatory to follow Rule 46A(3) of the Rule. It was found that the AO only objected the admissibility of additional evidence and restricted himself to comment on the merits of the evidence. Therefore, the Hon'ble court observes that the Id. CIT (A) did not follow the mandatory procedure for consideration of additional evidence at the first appellate stage.

Reasons must be given for non-acceptance of additional evidence under rule 46A:-


Abhay Kumar Shroff V/s. ITO 63 ITD 144(Pat)
Smt. Prabhavati S. Shah V/s. CIT,231 ITR 278 Collector Land
Katji 167 ITR 471 (SC)

Where CIT (A) has called for production of any document on his own during the course of appellate proceedings, then he is not obliged to call for a remand report from AO on the said evidences. In such circumstances the revenue cannot raise the issue of violation of Rule 46A

CIT v Surtech Hospital & Research Centre Ltd 293 ITR 53
(Bom),

One contrary view expressed by the Kerala High court in the
case of CIT v E. D. Benny 283 CTR (Ker) 212



- ▶ Summarised:
 - ▶ New Evidence
 - ▶ CIT(A) send for the remand report of the A.O.
 - ▶ Copy of the said Remand report is required to be provided to the Appellant
 - ▶ The appellant will file Rebuttal against such remand report
 - ▶ Thereafter Rejoinder may be submitted by the appellant
 - ▶ Hearing of the appeal petition
 - ▶ Order reserved by the CIT(A)
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THANK YOU

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3,
SUB-SECTION (ii)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]

**Income-tax
NOTIFICATION**

New Delhi, the 1st March, 2016

S.O. 637 (E).— In exercise of the powers conferred by sub-section (1) of section 249, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (**3rd** Amendment) Rules, 2016.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962 (herein after referred to as the said rules), for rule 45, the following rule shall be substituted, namely:-
“45. Form of appeal to Commissioner (Appeals).—(1) An appeal to the Commissioner (Appeals) shall be made in Form No. 35.
(2) Form No. 35 shall be furnished in the following manner, namely:-
 - (a) in the case of a person who is required to furnish return of income electronically under sub-rule(3) of rule 12,-
 - (i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
 - (ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);
 - (b) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule(2) or in paper form.
- (3) The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.
- (4) Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished.
- (5) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-
 - (i) specify the procedure for electronic filing of Form No.35 and documents;
 - (ii) specify the data structure, standards and manner of generation of electronic verification code,

referred to in sub-rule(2), for the purpose of verification of the person furnishing the said form; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished.”

3. In the said rules, in Appendix-II, for Form No.35, the following form shall be substituted, namely:-

“FORM NO. 35

(See rule 45)

Appeal to the Commissioner of Income-tax (Appeals)

Personal Information	First Name		Middle Name	Last Name or Name of Entity		PAN	
						TAN (if available)	
	Flat/ Door/ Block No.			Name of Premises/ Building/ Village		Road/ Street/ Post Office	
	Area/ Locality			Town/City/District		State (Select)	
	Country (Select)		Pin Code	Phone No. with STD code/ Mobile No.	Email Address		
	Whether notices/ communication may be sent on email? Yes/ No						
Order against which Appeal is filed	1	Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant				Assessment Year	
						Financial Year	
	2	Details of the order appealed against					
	a	Section and sub-section of the Income-tax Act, 1961					
	b	Date of Order					
	c	Date of service of Order / Notice of Demand					
3	Income-tax Authority passing the order appealed against						
Pending Appeal	4	Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellant with any Commissioner (Appeals)					Yes/ No
	4.1	If reply to 4 is Yes, then give following details.-					
	a	Commissioner (Appeals), with whom the appeal is pending					
	b	Appeal No. and date of filing of appeal					
	c	Assessment year/ financial year in connection with which the appeal has been preferred					
	d	Income-tax Authority passing the order appealed against					
	e	Section and sub-section of the Income-tax Act, 1961, under which the order appealed against has been passed					
	f	Date of such Order					
Appeal Details	5	Section and sub-section of the Income-tax Act, 1961 under which the appeal is preferred					
	6	If appeal relates to any assessment					
	a	Amount of Income Assessed (in Rs.)					
	b	Total Addition to Income (in Rs.)					
	c	In case of Loss, total disallowance of Loss in assessment (in Rs.)					
	d	Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.)					
	e	Amount of Disputed Demand (in Rs.) – Enter Nil in case of Loss					
	7	If appeal relates to penalty:					
	a	Amount of penalty as per Order (in Rs.)					
b	Amount of penalty disputed in Appeal (in Rs.)						

Details of Taxes paid	8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full			Yes/No/ Not Applicable												
	8.1	If reply to 8 is Yes, then enter details of return and taxes paid															
		a	Acknowledgement number														
		b	Date of filing														
		c	Total tax paid														
	9	Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid			Yes/No/ Not Applicable												
9.1	If reply to 9 is Yes, then enter details Tax Payments <table border="1" style="width: 100%;"> <tr> <th>BSR Code</th> <th>Date of payment</th> <th>Sl. No.</th> <th>Amount</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td>Total</td> <td> </td> <td> </td> <td> </td> </tr> </table>				BSR Code	Date of payment	Sl. No.	Amount					Total				
BSR Code	Date of payment	Sl. No.	Amount														
Total																	
	10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1) <table border="1" style="width: 100%;"> <tr> <th>BSR Code</th> <th>Date of payment</th> <th>Sl. No.</th> <th>Amount</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>				BSR Code	Date of payment	Sl. No.	Amount								
	BSR Code	Date of payment	Sl. No.	Amount													
Statement of facts, Grounds of Appeal and additional evidence	11	Statement of Facts Facts of the case in brief (not exceeding 1000 words) List of documentary evidence relied upon															
	12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of rule 46A			Yes / No												
	12.1	If reply to 12 is Yes, furnish the list of such documentary evidence															
	13	Grounds of Appeal (each ground not exceeding 100 words)															
		1.															
		2.															
		3.															
Appeal filing details	14	Whether there is delay in filing appeal			Yes/ No												
	15	If reply to 13 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)															
	16	Details of Appeal Fees Paid <table border="1" style="width: 100%;"> <tr> <th>BSR Code</th> <th>Date of payment</th> <th>Sl. No.</th> <th>Amount</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>				BSR Code	Date of payment	Sl. No.	Amount								
BSR Code	Date of payment	Sl. No.	Amount														
	17	Address to which notices may be sent to the appellant															

Form of verification

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place

Signature

Date

”

[Notification No.11/2016, F.No.149/150/2015-TPL]

(Ekta Jain)
Deputy Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification number S.O. 969(E), dated the 26th March, 1962 and last amended vide notification number S.O.502(E), dated the 17.02.2016.