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How to claim new claims which was not claimed in the return, new ground before CIT - Appeals etc

Relevant Provisions :

- Section 250(4) of the Income Tax Act
read with
- Rule 46A of the Income Tax Act

Rule 46A of the IT Act

- **Rule 46A of the Income Tax Rules, 1962** deals with the **production of additional evidence** before the **Commissioner of Income Tax (Appeals) [CIT(A)]** during the appeal process.
- It sets specific conditions under which an appellant (the taxpayer) can submit additional evidence that was not presented during the assessment proceedings

Key Provisions of Rule 46A

Circumstances for Admitting Additional Evidence:

- The appellant can present additional evidence before the CIT(A) only in the following situations:
- **Refusal by the Assessing Officer (AO):** If the AO refused to admit evidence that was relevant to the case.
- **Sufficient cause for non-production:** If the appellant was prevented by sufficient cause from producing the evidence at the time of the assessment or before the AO.
- **Inadequate opportunity:** If the AO passed the assessment order without giving the appellant sufficient opportunity to present the necessary evidence.
- **Other reasons:** Any other valid reason that prevented the appellant from producing the evidence during the assessment stage.

Opportunity to the Assessing Officer (AO)

- If additional evidence is admitted by the CIT(A), the CIT(A) must provide the **Assessing Officer an opportunity to examine the evidence** or to cross-examine the witness and present their observations.
- The CIT(A) cannot directly act on the additional evidence without first allowing the AO to comment on it.

No Right to Submit Additional Evidence

- Rule 46A makes it clear that the appellant does **not have an automatic right to submit additional evidence** before the CIT(A). The CIT(A) must first be satisfied that the conditions mentioned above are met.
- The CIT(A) may refuse to admit the evidence if the appellant fails to show any sufficient cause for not producing the evidence during the assessment.

Record of Reasons:

- If the CIT(A) decides to admit additional evidence, they must **record the reasons** for doing so. This ensures transparency in the appellate proceedings.

Discretion of the CIT(A):

- The CIT(A) has the **discretion** to admit or reject the additional evidence based on the merits of the case and the circumstances outlined in Rule 46A.

Sum-up

Rule 46A ensures that taxpayers cannot simply produce new evidence at the appeal stage without valid reasons, thereby preventing abuse of the appellate process. However, it also ensures fairness by allowing additional evidence when genuine circumstances exist, such as refusal by the AO or lack of opportunity during assessment.

Key Features of Section 250(4)

- **Inquiry by CIT(A):**
 - Under Section 250(4), the CIT(A) has the power to **make further inquiries** if deemed necessary for the proper adjudication of the appeal.
 - This inquiry can be initiated **suo motu** (on their own initiative) or based on the facts of the case.
- **Requiring Further Evidence:**
 - The CIT(A) can direct the **Assessing Officer (AO)** or the appellant to **furnish additional evidence or information** if the existing evidence is insufficient to make a fair decision.
- This gives the CIT(A) a broad power to ensure that all relevant facts and evidence are considered before delivering the appellate order.

Implications of Section 250(4)

- The **CIT(A)'s role is not limited to reviewing** the evidence already on record during the assessment. Instead, the CIT(A) can expand the scope of the appeal by calling for more information or conducting further investigations if required.
- The provision helps ensure that the appeal is decided on the basis of complete facts and circumstances, allowing the CIT(A) to take a holistic view of the case.

Example

- If during the appeal, it is found that certain vital documents or information were not examined by the Assessing Officer, the CIT(A) can use their powers under Section 250(4) to obtain those documents or call for further investigation to ensure that a proper and just decision is made.

Purpose:

- The primary goal of Section 250(4) is to ensure that the appellate authority has all the necessary evidence before making a final decision, thereby promoting fairness and transparency in the appellate process. It also ensures that justice is not denied due to incomplete or insufficient evidence during the initial assessment

Important Jurisprudence

Whether CIT(A) should exercise suo moto his power u/s 250(4):

Yes. In Smt. Prabhavati S. Shah v. CIT¹³ a situation arose relating to admission of new evidence by the Commissioner (Appeals). In this case, AO initiated investigation regarding cash credits, issued summons to the creditors which could not be served upon them, as a result the AO treated the credits as deemed income u/s 68. Assessee on appeal before CIT(A) sought to produce photocopies of cheques and a certificate from the bank to show that the sum was received by the assessee from the creditor by cheque and a copy of the account of the assessee with the said bank, which information was necessary to decide controversy in regard to the genuineness of the loan. Hon'ble Bombay High Court held that it was not necessary to invoke Rule 46A as the evidence submitted by the assessee could have been considered by the AAC in exercise of his powers under sub-sections (4) and (5) of section 250 which he failed to do. Hon'ble Court observed that "Thus, it was a fit case where the AAC should have exercised the powers conferred upon him and taken on record the zerox copies of the cheque, the certificate from the bank and the copy of the account of the assessee with the said bank and considered the same for deciding the genuineness of the loan." "Even otherwise, the present case would fall under clause (c) of sub-rule (1) of rule 46A because the assessee had no occasion to collect this evidence earlier. He would have reasonably expected that the creditors will appear before the ITO in compliance with the summons issued by him. He was never informed by the ITO that the creditors were not available or identifiable". The gist of the decision of Hon'ble Bombay High Court in this case is that the Commissioner (Appeals) should consider the necessary evidence in exercise of powers under section 250(4) even if the case of the assessee does not fall within the four corners of the circumstances enumerated in rule 46A(1).





THANK YOU!