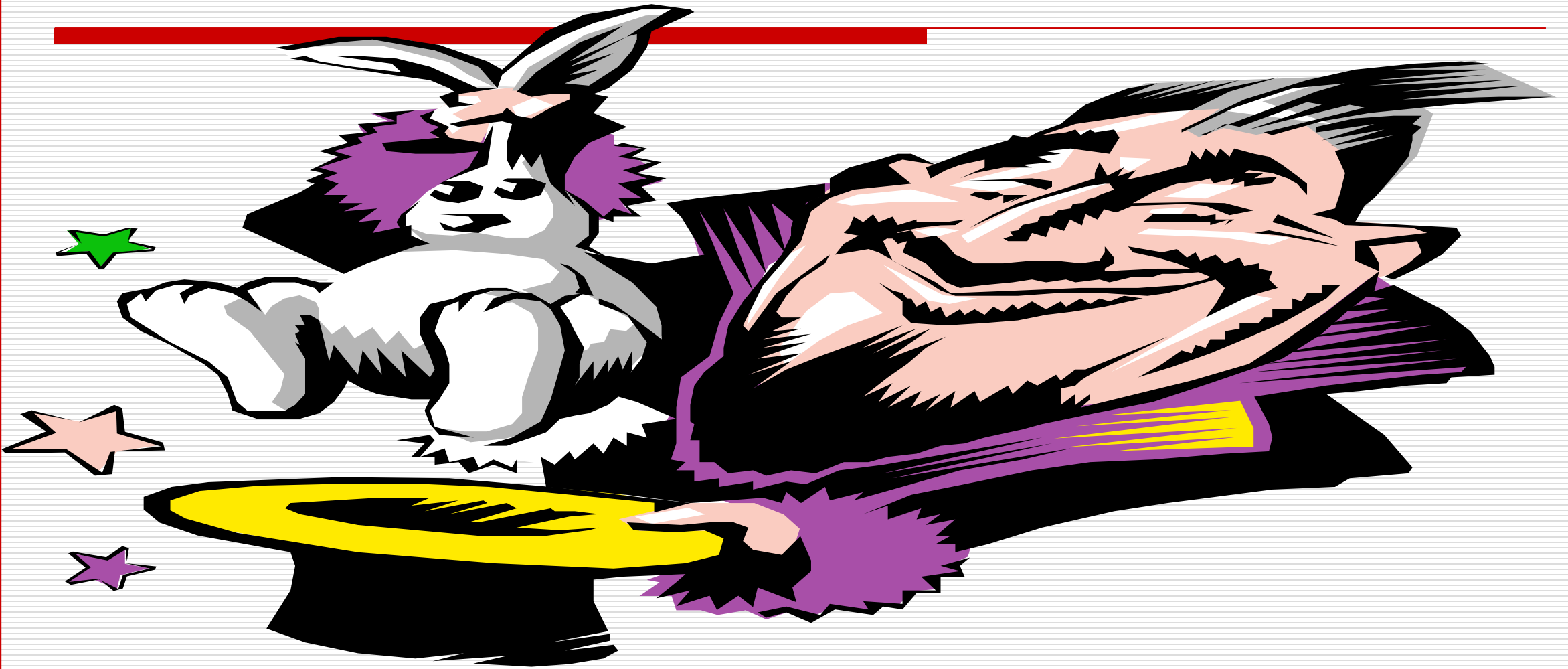


Provisions and Procedures of filing Appeals before CIT (Appeal)

CMA Niranjan Swain, B.Com, LLB, CS, FCMA

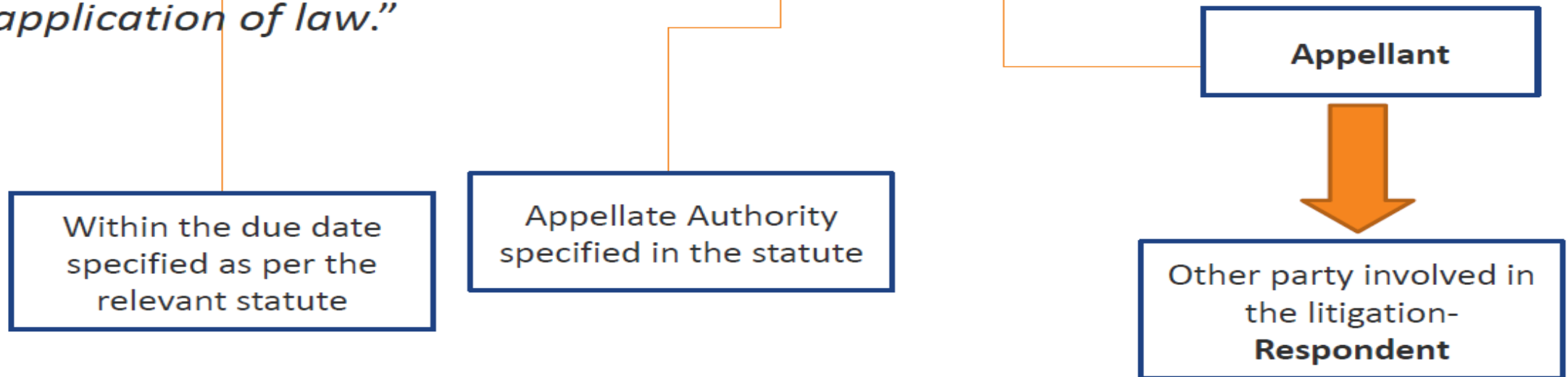


Right to Appeal

- ☐ The expression 'appeal' has been defined in Mozley and Whitely's Law Dictionary as "a complaint to a superior court, of an injustice done by an inferior one."
- ☐ The party complaining is styled as the appellant & the other as the respondent.

Right to Appeal

“Timely resort by an unsuccessful party in a lawsuit or administrative proceeding to an appropriate superior court empowered to *review* a final decision on the ground that it was based on an *erroneous application of law*.”



Right to Appeal

Hariher Gir v. CIT (1941) 9 ITR 246 (Pat).

The right of appeal is not inherent or a fundamental right but it is a creature of the Statute governing it. The right to appeal must be given by express enactment & cannot be implied

Haji Gulam Husain & Sons v CIT (1957) 31 ITR 231 (All.).

Further, the statutory provision conferring the right of appeal have to be consulted to determine the nature & extent of that right

CIT v Bengal Cardboard Industries & Printers Pvt. Ltd. (1989) 176 ITR 788 (Cal.).

An appeal is a continuation of assessment proceedings. The right to appeal is a substantive right which gets crystallized when assessment proceedings are initiated.

Right to Appeal

Kakati v CIT (1963) 14 STC 84 (Mys).

An assessee cannot complain for not providing a right of appeal by the legislature against the tax imposed *on* him -

Express Hotel Pvt. Ltd. v State of Gujarat (1989) 178 ITR 151 (SC)

It has held that the absence of the appeal provision doesn't make the provision per se unreasonable.

Vidyapat Singhanian v CIT 107 ITR 533 (All).

The Court cannot change the language of a provision in order to infer a right of appeal, if no such right is provided by the Statute -

R.B Jodha Mal Kuthiala v CIT.66 ITR 319 (Del.)-

Held that in case of ambiguity the relevant provision must be construed in favour of the existence of a right of appeal.

Option -1 : Appellate Hierarchy under Income Tax Act

Appellate Authorities in Income-tax Act

Appeal	Appellate authority	Against which order	Appellant
1st	Commissioner (Appeals)	Against specified order of the Assessing Officer	Assessee only
2nd	Income Tax Appellate Tribunal (ITAT)	Against the order of Commissioner (Appeals)	Assessee or the Commissioner (or Principal Commissioner) of Income tax
3rd	High Court	Against the order of ITAT (the case must involve substantial question of law)	
Final	Supreme Court	Against the order of High Court	

Assessment Order



Option 2: Appeal against Revision u/s. 263 or Registration u/s. 12AA

Nature of Action	Appeal to be filed before	Order against which it can be preferred	Who can file appeal?
First Appeal	Income Tax Appellate Tribunal	Against order of Commissioner	Taxpayer (Assessee) Or CIT (Revenue)
Appeal before the High Court	High Court	<i>Substantial question of law</i> arising out of the order of ITAT	Taxpayer (Assessee) Or CIT (Revenue)
Appeal before the Supreme Court	Supreme Court	Judgement of the High Court	Taxpayer (Assessee) Or CIT (Revenue)

Option 3: Directions issued by the Dispute Resolution Panel u/s. 144C

Nature of Action	Appeal to be filed before	Order against which it can be preferred	Who can file appeal?
First Appeal	Income Tax Appellate Tribunal	Order of the AO passed u/s. 143(3) r.w.s. 144C	Eligible Assessee Or CIT (Revenue)
Appeal before the High Court	High Court	<i>Substantial question of law</i> arising out of the order of ITAT	Eligible Assessee Or CIT (Revenue)
Appeal before the Supreme Court	Supreme Court	Judgement of the High Court	Eligible Assessee Or CIT (Revenue)

Appeal to Commissioner (Appeals) – U/S 246A

Appealable Order

-
- (a) (i) an order passed by a Joint Commissioner under section 115VP(3)(ii) refusing to approve the option for tonnage tax scheme; or
- (ii) an order against the assessee where the assessee denies his liability to be assessed under this Act; or
- (iii) an intimation under section 143(1)/(1B) or section 200A(1) or section 206CB(1), where the assessee or the deductor or the collector objects to the making of adjustments; or
- (iv) any order of assessment under section 143(3) except an order passed in pursuance of the directions of Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules] or a best judgement order under section 144, in relation to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

Appeal to Commissioner (Appeals) – U/S 246A

Appealable Order

- (b) an order of assessment, reassessment or recomputation under section 147 [except an order passed in pursuance of the directions of Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules or section 150;
- (c) an order of assessment or reassessment under section 153A, except an order passed in pursuance of the directions of the Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules;
- (d) an order of assessment or reassessment passed by the Assessing Officer under section 92CD(3) in accordance with the Advance Pricing Agreement pursuant to a modified return filed in accordance with section 92CD(1);

Appeal to Commissioner (Appeals) – U/S 246A

Appealable Order

- (e) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections except an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules;
- (f) an order made under section 163 treating the assessee as the agent of a non-resident;
- (g) an order made under section 170(2)/(3) assessing income of business prior to succession in the hands of the successor;
- (h) an order made under section 171 relating to assessment after partition of HUF;
- (i) an order made under section 201 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;

Appeal to Commissioner (Appeals) – U/S 246A

Appealable Order

(j) an order made under section 206C(6A) deeming a person to be an assessee-in-default for failure to collect or pay tax;	Section	Particulars
(k) a refund order made under section 237;	271A	Failure to keep maintenance of books of accounts
(l) an order imposing a penalty under	271AAB	Undisclosed income incase of Search
(i) Section 221; or	272AA	Failure to comply with provisions of section 133B
(ii) Section 271A, section 271AAB, section 272AA or section 272BB;	272BB	failure to comply with few provisions of TDS / TCS
(n) an order imposing penalty under section 271B;	271B	Failure to get accounts audited u/s 44AB / submission or report
(o) an order imposing a penalty under section 271C, section 271CA, section 271D, or section 271E;	271C	Failure to deduct TDS
(p) an order imposing a penalty under section 272A;	271CA	Failure to collect tax at source
(q) an order imposing a penalty under section 272AA;	271D	taking / accepting loan / deposits in contravention of sec 269SS
(r) an order imposing or enhancing penalty under section 275(1A);	271E	Repaying loan / advances other than in accordance with section 269T
(s) an order imposing a penalty under Chapter XXI;	272A	Failure to answer any question/ sign any statement / comply to notice u/s 142(1) / 143(2)
(t) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.	Penalty under chapter XII	Balance provisions of penalty

Appeal to Commissioner (Appeals) – U/S 248A

Appealable Order

Where under an agreement or other arrangement –

- ❖ • the tax deductible u/s 195 on any income (other than interest) is to be borne by the person by whom the income is payable; &
 - ❖ • such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income,
- he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income

Notes:

- ❖ a) *Even when reassessment proceedings have been initiated u/s 147, an appeal can still be filed against the original assessment order passed u/s 143(3)*
- ❖ b) *Assessee has the right to appeal against an order of the Assessing Officer which is passed while giving effect to the decision of the appellate authority.*

Appealable Orders

Appealable Orders:

- Where orders show revised computation of total income and particular levy of interest under section 220(2) is only one of many items considered in 'giving effect' orders, it can be deemed either as an order passed under section 154 or passed under section 143(3), and is thus appealable. - **Precot Meridian Ltd. [2013] 38 taxmann.com 13 (Chennai - Trib.)**

Non Appealable Orders

- ☐ 1. *Assessment made on an agreed basis* - **Sterling Machine Tools v. CIT (123 ITR 181)(All.)**
- ☐ 2. *The assessee had agreed to disallowance* - **ITO v. Chunnilal Ramjas Rai**
- ☐ 3. *No objection by the assessee to the rectification of assessment order* - **Ramanlal Kamdar v. CIT (108 ITR 73)(Mad.)**
- ☐ 4. *Rectification u/s. 154 on assessee's consent* - **CIT v. Cochin Malabar Estate and Industries Ltd. (180 ITR 152)(Ker.)**
- ☐ 5. *Appeal against interest* – **ANZ Grindlays Bank PLC v. CIT (241 ITR 269)(Cal.)**

Filing of Appeal before Commissioner (Appeals)

☐ Form of appeal:

- ❖ Form 35 (Mode of filing depends i.e., electronically or in paper form, on mode of filing return of income of the assessee)
- ❖ Statement of Facts
- ❖ Ground of Appeal

☐ Documents to be submitted

- ❖ • Order against which appeal is made
- ❖ • Notice of demand (in Original)
- ❖ • Challan showing deposit of tax if any and fee

For Online filing of Appeals, the above documents are required in Soft format.

- ### ☐ Also required: 1. Digital Signature Certificate (DSC) of Authorized Signatory of the Assessee

Appeal to Commissioner (Appeals)

- ❑ **Verification of Form:** Form & grounds of appeal must be verified by the person authorised to verify the return of income u/s 140
- ❑ **Payment of tax before filing of appeal**
- ❖ **If a return has been filed** – Tax as per the return should be paid.
- ❖ **If no return has been filed** – The assessee should pay an amount equal to the advance tax which was payable by him. However, CIT(A) may, for any good and sufficient reason (recorded in writing), accept the appeal without payment of such advance tax.

Check List – Filing of Appeals before CIT (Appeals)

- ☐ 1.Ensure that all the notices and replies filed thereto in the course of appeal proceedings are at hand. If not, then one may comply with all such notices before the order is passed. Show cause notices should not be ignored.
- ☐ 2. On receipt of order and notice of demand, note the date of service of order and notice of demand.
- ☐ 3. Find the points of grievance.
- ☐ 4. Prepare a reconciliation of return income and assessed income.
- ☐ 5. List out the additions made, disallowances, whether a notice was issued u/s. 143(2) for assessment and the order passed are within the prescribed time limit. Section 292BB to be taken into consideration.
- ☐ 6. Check sec.246A to ensure that the order is appealable and under which clause.
- ☐ 7.Prepare application for rectification in respect of mistakes, which are apparent from record.

Check List – Filing of Appeals before CIT (Appeals)

- ☐ 8. Fill Form No. 35. Prepare a statement of facts and the grounds of appeal.
- ☐ 9. Ensure compliance of sec. 249 (4). Payment of taxes and interest.
- ☐ 10. Pay appropriate appeal-filing fees.
- ☐ 11. Grounds of appeal should be simple, concise, aptly worded, and serially numbered issue-wise.
- ☐ 12. Statement of facts should highlight each and every fact, since there is only one opportunity for filing the statement of facts.
- ☐ 13. Ensure to incorporate all additions, disallowances made in the assessment order from different angles i.e. put alternative claims with the words “Without prejudice to above”.

Check List – Filing of Appeals before CIT (Appeals)

- ➔ 14. After raising all the grounds of appeal, crave leave to add, to amend, alter, modify, delete, etc. any of the grounds of appeal without which the CIT(A) may not allow to take some additional grounds or even withdraw the appeal.`
- ➔ 15.Ensure that the appeal is filed with the jurisdictional CIT (A) as mentioned on the rear side of the demand notice.
- ➔ 16. File a stay-petition with the Assessing Officer in respect of demand within 30 days of the date of service of the order.
- ➔ 17. Prior to filing of stay of demand, 15% of the disputed demand should be paid.- CBDT Office memo F.No.404/72/93-ITCC, dated 29.02.2016

Online Filing of Appeal before CIT (Appeals)

- ❑ Make 2 versions of the Statement of Facts and Grounds of Appeal. *Statement of facts must not exceed 1000 words, and the Grounds of Appeal must not exceed 100 characters per ground.*
- ❑ However, one is allowed to upload a PDF file containing the Statement of Facts and Grounds of Appeal while filing the appeal.
- ❑ Ø Avoid using special characters. ('-', '/', '@', etc.)
- ❑ Ø DSC of the Authorized Signatory of the assessee is a must for filing the Appeal.
- ❑ Ø Prepare PDF copies of the Assessment order and the Notice of demand, duly attested by the Authorized Representative.
- ❑ Attachments must not exceed 50mb in size and must be in pdf/zip format.

Online Filing of Appeal before CIT (Appeals)

- ☐ Ø In the new Form 35, it is required to cite the relevant Section(s) under which the addition/ disallowance has been made.
- ☐ Ø EVC (Electronic Verification Code) is now available for an assessee not having a DSC.
- ☐ Should physical copies of the appeal documents be filed with the CIT(A) even if the appeal is filed online?

Steps by Step in e-Filing Appeal before CIT (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.

e-Filing Home Page, Income Tax Department, Government of India

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e-Filing Anywhere Anytime

Income Tax Department, Government of India

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View Form 26 AS | Upload Return | Check Status

"I have been e-filing my returns for the last four AYs and I find the Portal very user friendly. I am indeed delighted that filing ITR and getting IT Refund(if any) has become much easier. I compliment the IT Department for their consistent effort in facilitating more user-friendly ITR filing." - 28/03/2016

All ITRs

New To e-Filing?

Register Yourself

Registered User?

Login Here

Need Assistance?

Customer Care

Services

- Quick e-File ITR-1 & ITR-4S
- Submit Returns / Forms
- View Form 26AS (Tax Credit)
- Outstanding Tax Demand
- CPC Refund Status
- Rectification Status

News & Updates

22/04/2016

The "Bulk ITR" upload functionality has been enhanced. Please refer the user manual (Secured Web service user manual) under the "Help" section for further details.

14/04/2016

All ITRs including ITR 6 and ITR 7 for AY 2016-17 are available for e-Filing.

13/04/2016

ITR 4 and ITR 5 for AY 2016-17 are also available for e-Filing. Other ITRs will be

Downloads

AY 2016-17

- ITR-1(SAHAJ)
- ITR-2
- ITR-3
- ITR-5
- ITR-7
- ITR-4S(SUGAM)
- ITR-2A
- ITR-4
- ITR-6

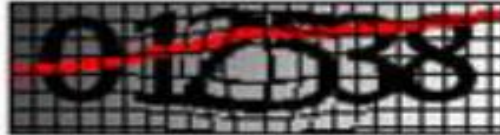
Login

User ID *

Password *

Captcha Code

Image



Enter the number as in above image *

Login

[Forgot Password?](#)

New Users? [Register Now](#) | [Resend Activation Link](#)



e-Filing Login Through NetBanking

Dashboard My Account ▾ e-File ▾ Compliance ▾ Downloads ▾ Profile Settings ▾ My Request List ▾ Worklist ▾ Helpdesk ▾

Quick Link

- Quick e-File ITR
- Upload Return
- View Form 26AS (Tax Credit)
- Rectification Request
- Tax Calculator
- Downloads
- E-Pay Tax

Upload Return

Prepare and Submit Online ITR

e-File in response to Notice u/s 139(9)

Change ITR Form Particulars

Prepare and Submit Online Form(Other than ITR)

e-Verify Return

Generate EVC

Upload Form BB (Return of Net Wealth)


Response to Outstanding Tax Demand

Upload Form 6 (for undisclosed foreign asset)

IMPORTANT !!!


Correct Email ID and Mobile Number against your p
sed for all communications.

Prepare and Submit Form Online (Other than ITR)

PAN	<input type="text" value="A-1234567890"/>
Form Name *	35 ▼
Click here to download the DSC Utility ?	
<div> Steps to Generate Signature File :<ul style="list-style-type: none">♦ Download the "ITD e-Filing DSC Management Utility".♦ Generate the signature file. Follow the instructions in the Utility.♦ Attach the generated signature file.<p>Note: The generated signature file is valid only for one transaction.</p></div>	
Attach the Signature file *	<input type="button" value="Choose File"/> <input type="text" value="A-1234567890 signature"/>
<div><input type="button" value="Continue"/> <input type="button" value="Cancel"/></div>	

Navigation Trail:

Select CIT(A)

Please select the relevant CIT(A) from the drop down.	Select ▼
Please check the checkbox if CIT(A) you wish to appeal is not present in drop down	<input checked="" type="checkbox"/>
Please select the State*	Delhi (UT) ▼
Please select the City*	DELHI ▼
Please select the relevant CITA*	<div> Please select the relavant CIT(A) from the dropdown.</div> Select ▼

Continue Cancel

Continue Cancel

https://income-tax-appeals.gov.in/... Last Login: 12/04/2018 14:52:44 Logout

Dashboard - My Account - e-File - Compliance - Downloads - Profile Settings - My Request List - Worklist - Helpdesk -

Quick Link

- Quick e-File ITR
- Upload Return
- View Form 26AS (Tax Credit)
- Rectification Request
- Tax Calculator
- Downloads
- E-Pay Tax

Navigation Trail:

FORM NO. 35
[See rule 45]
Appeal to the Commissioner of Income-tax (Appeals)

Submit Save Draft Exit

Instructions Form 35 Verification Attachments

Instructions

General Instructions:

- Fields marked with asterisk (*) are mandatory.
- While entering the data in online form, please do not click BACK button in browser or press BACKSPACE button. You will be logged out.
- All amounts are in Indian Rupees.
- A calendar is provided for selecting the date field (format DD/MM/YYYY).
- All greyed out fields are either auto-filled or non-editable.
- It is a good practice to save your work frequently. Please use SAVE AS DRAFT option.
- Attachments
 - All the attachments together should not exceed 50 Mb.
 - All the attachments should be in Pdf or Zip format only.
- In Forms wherever information is captured in tables
 - Adding new Row: Click ADD button to add a new row and enter values in the field provided.
 - Deleting Row: Select the row to delete from the list and click DELETE ROW button.
- Please enter only the value whenever the information is needed in percentile.
- It is preferable to have JRE version 1.7 and above installed on your machine.
- Please verify the Form, accompanying attachments/documents before you submit.

Submit Save Draft Exit

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5. All greyed out fields are either auto-filled or non-editable.
6. It is a good practice to save your work frequently. Please use SAVE AS DRAFT option.
7. Attachments
 - (a) All the attachments together should not exceed 50 Mb.
 - (b) All the attachments should be in Pdf or Zip format only.
8. In Forms wherever information is captured in tables
 - (a) Adding new Row: Click ADD button to add a new row and enter values in the field provided.
 - (b) Deleting Row: Select the row to delete from the list and click DELETE ROW button.
9. Please enter only the value wherever the information is needed in percentile.
10. It is preferable to have JRE version 1.7 and above installed on your machine.
11. Please verify the Form, accompanying attachments/documents before you submit.

FORM NO. 35

[See rule 45]

Appeal to the Commissioner of Income-tax (Appeals)

 Submit

 Save Draft

 Exit



Instructions

Form 35

Verification

Attachments

Personal Information


First Name <input type="text"/>	Middle Name <input type="text"/>	Last Name or Name of Entity* <input type="text"/>	PAN* <input type="text"/>
			TAN (if available) <input type="text"/>
Flat/ Door/Block No * <input type="text"/>		Name of Premises / Building / Village <input type="text"/>	Road/ Street /Post Office <input type="text"/>
Area/ Locality * <input type="text"/>	Town/ City/ District * <input type="text"/>	State * <input type="text"/>	Country * <input type="text"/>
Pincode * <input type="text"/>	Mobile No * <input type="text"/>	STD code <input type="text"/>	Phone No. <input type="text"/>
Email Address * <input type="text"/>		Whether notices/ communication may be sent on email?* <input type="text"/>	

Order against which Appeal is filed

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*	Assesessment Year
		Financial Year
<div> <div>2013-14</div> <div>Select</div> <div>2020-21</div> <div>2019-20</div> <div>2018-19</div> <div>2017-18</div> <div>2016-17</div> <div>2015-16</div> <div>2014-15</div> <div>2013-14</div> <div>2012-13</div> <div>2011-12</div> <div>2010-11</div> <div>2009-10</div> <div>2008-09</div> <div>2007-08</div> <div>2006-07</div> <div>2005-06</div> <div>2004-05</div> <div>2003-04</div> <div>2002-03</div> </div>		
Details of the order appealed against		
2	a Section and sub-section of the Income-tax Act, 1961*:	Select
	b Date of Order*	
	c Date of service of Order / Notice of Demand *	
3	Income-tax Authority passing the order appealed against *	WARD 61(1), DELHI
Pending Appeal		
4	Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellatant with any Commissioner (Appeals) *	
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 ()	
	b Total Addition to Income ()	

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*		Assesement Year
			Financial Year
<div>2013-14</div> <div>Select</div>			
Details of the order appealed against			
2	a	Section and sub-section of the Income-tax Act, 1961*:	Select
	b	Date of Order*	Select
	c	Date of service of Order / Notice of Demand *	143(1) 147 144 143(3) 143(1B) 201 171 170(3) 170(2) 16(3) 155 154 150 271B 271A 271 237 221 272BB
3	Income-tax Authority passing the order appealed against *		WARD 6
Pending Appeal			
4	Whether an appeal in relation to any other assessment year/ financial year is pe case of the appellatant with any Commissioner (Appeals) *		
Appeal Details			
5	Section and sub-section of the Income-tax Act, 1961 under which the appeal is		
6	If appeal relates to any assessment ?*		
	a	Amount of Income Assessed (₹)	
	b	Total Addition to Income (₹)	

Details of the order appealed against			
2	a	Section and sub-section of the Income-tax Act, 1961*:	143(3) ▼
	b	Date of Order*	31/03/2016 
	c	Date of service of Order / Notice of Demand *	10/04/2016 
3	Income-tax Authority passing the order appealed against *		WARD 61(1), DELHI
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) *		<div> Select ▼ Select Yes No </div>
Appeal Details			
5	Section and sub-section of the Income-tax Act, 1961 under which the appeal is preferred *		246A
6	If appeal relates to any assessment ?*		Select ▼
	a	Amount of Income Assessed (₹)	
	b	Total Addition to Income (₹)	
	c	In case of Loss, total disallowance of Loss in assessment (₹)	
	d	Amount of Addition/ Disallowance of Loss disputed in Appeal (₹)	
	e	Amount of Disputed Demand (₹)- Enter Nil in case of Loss	

b	Total Addition to Income (₹)	<input type="text" value="0"/>
c	In case of Loss, total disallowance of Loss in assessment (₹)	<input type="text" value="2500000"/>
d	Amount of Addition/ Disallowance of Loss disputed in Appeal (₹)	<input type="text" value="2500000"/>
e	Amount of Disputed Demand (₹)- Enter Nil in case of Loss	<input type="text" value="0"/>
7	If appeal relates to penalty ?*	<input type="text" value="Not Applicable"/>
a	Amount of penalty as per order (₹)	<input type="text"/>
b	Amount of penalty disputed in Appeal (₹)	<input type="text"/>
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 *	<input type="text" value="Yes"/> <input type="text" value="Select"/> <input type="text" value="Yes"/> <input type="text" value="No"/> <input type="text" value="Not Applicable"/>
8.1	If reply to 8 is Yes, then enter details of return and taxes paid	
	a	Acknowledgement number <input type="text"/>
	b	Date of filing <input type="text"/> 
	c	Total tax paid <input type="text"/>
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*	<input type="text" value="Select"/>

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 ▼
8.1 If reply to 8 is Yes, then enter details of return and taxes paid					
		a	Acknowledgement number	123456789011121	
		b	Date of filing	31/10/2013	
		c	Total tax paid		0
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 ▼ Select Yes No Not Applicable
9.1 If reply to 9 is Yes, then enter details					
Tax Payments					
Sl. No.		BSR Code	Date of payment	Serial Number	Amount
1					
Total					0
<div style="display: flex; gap: 10px;"> + Add X Delete </div>					
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)				

Statement of facts, Grounds of Appeal and additional evidence

Statement of Facts				
11	Facts of the case in brief (not exceeding 1000 words) *		<div></div>	
	List of documentary evidence relied upon		<div></div>	
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 *		<div>Select ▼</div>	
12.1	If reply to 12 is Yes, furnish the list of such documentary evidence		<div></div>	
13	Grounds of Appeal(each ground not exceeding 100 words)*			
Sl. No.		Relevant section (s) of IT/Act	Issue	Ground of Appeal
1	<input type="checkbox"/>	<div></div>	<div></div>	<div></div>
<div> <div>+ Add</div> <div>X Delete</div> </div>				


Appeal filing details


Appeal filing details					
14	Whether there is delay in filing appeal*				
15	If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)				
16	Details of Appeal Fees Paid*				
Sl. No.	BSR Code	Date of payment	Serial Number	Amount	
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>					
17. Address to which notices may be sent to the appellant*					
Flat/ Door/Block No *		Name of Premises / Building / Village		Road/ Street /Post Office	
<input type="text"/>		<input type="text"/>		<input type="text"/>	
Area/ Locality *	Town/ City/ District *	State *	Country *		
<input type="text"/>	DELHI	DELHI	INDIA		
Pincode *	Mobile No *	Email Address *			
0	<input type="text"/>	<input type="text"/>			
<input type="button" value="✓ Submit"/> <input type="button" value="Save Draft"/> <input type="button" value="X Exit"/>					

FORM NO. 35

[See rule 45]

Appeal to the Commissioner of Income-tax (Appeals)

 Submit

 Save Draft

 Exit



Instructions

Form 35

Verification


Attachments


VERIFICATION

I*,
/Name of Appellant (AUTO)
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*

Date:* 23/04/2016

 Submit

 Save Draft

 Exit



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FORM NO. 35

[See rule 45]

Appeal to the Commissioner of Income-tax (Appeals)

 Submit

 Save Draft

 Exit



Instructions

Form 35

Verification

Attachments

Attachments


Notes :

a) All attachments should be in Pdf or Zip format only.

b) Each attachment should not exceed 5 Mb.

Attachment :

1	Copy of order appealed against	 No file chosen
2	Notice of demand	 No file chosen
3	Any other attachment	 No file chosen

 Submit

 Save Draft

 Exit



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Deposit of Appeal Fee Appeal Fee to be deposited – section 249(1)

	Case	Prescribed fees
(i)	where the total income of the assessee as computed by the Assessing Officer is ₹ 1,00,000 or less	₹ 250
(ii)	where the total income of the assessee computed as above is more than ₹ 1,00,000 but not more than ₹ 2,00,000	₹ 500
(iii)	where the total income of the assessee computed as above is more than ₹ 2,00,000	₹ 1,000
(iv)	in any case other than (i), (ii) and (iii) above	₹ 250

Deposit of Appeal Fee - Section 249(1)

- ❑ The issue arises whether in respect of an appeal against the penalty order, the filing fees would depend upon assessed income or not.
- ❑ The Hon'ble Mumbai Tribunal in *Amruta Enterprises v Dy. CIT 84 ITD* has held that in case of appeal to the tribunal against levy of concealment penalty u/s 271(1)(c), since the quantum of penalty is not linked to assessed income but tax sought to be evaded, a proper filing fee is Rs. 500 in ITAT. Same analogy can also be applied for CIT (A) and thus, proper filing fee before CIT(A) would be Rs. 250.
- ❑ Similarly, in case of appeals made against the order u/s. 201 in connection with the TDS matters, proper filing fee before CIT(A) would be Rs. 250 irrespective of the amount involved.

Time Limit for Filing Appeal with CIT(Appeals)– section 249(2) & (3)

	Appeal relating to	30 days to be reckoned from
1.	Section 248	Date of payment of tax
2.	Assessment/penalty	Date of service of notice of demand
3.	Any other case	Date on which intimation of the order sought to be appealed against is served.

Period to be excluded while computing 30 days in case of appeal relating to assessment/penalty

	Application	Period to be excluded	
		From	To
1.	Under section 146 for reopening an assessment	The date on which application is made	The date on which the order passed on the application is served on the assessee
2.	Under section 270AA(1)	The date on which the application is made	The date on which the order rejecting the application is served on the assessee

Time Limit for Filing Appeal with CIT(Appeals)– section 249(2) & (3) / Condonation of Delay in filing appeal

- ❑ In computing the aforesaid time limit of 30 days, the day on which an order was served shall be excluded. Moreover, if the assessee was not furnished with the copy of the order when the notice of demand was served upon him, the time requisite for obtaining a copy of such order shall be excluded – *CIT v Prem Kumar Rastogi (1980) 124 ITR 381 (All.)*.
- ❑ **Delay in filing appeal:**
- ❑ The Commissioner of Appeals may admit an appeal after the expiry of the said period, if he is satisfied that the appellant has sufficient cause for not presenting it within the time period.
- ❑ Courts have taken the view that the condonation of delay should be viewed broadly and this power be exercised liberally. **Ram Nath Sao alias Ram Nath Sahu and others, reported in AIR 2002 SC 201 / Mst. Katiji & Others reported in 167 ITR 471**

Note: It is statutory obligation of the appellate authority (where an application for condonation is filed) to consider whether sufficient cause was shown by the appellant

Time Limit for Filing Appeal with CIT(Appeals)– section 249(2) & (3) / Condonation of Delay in filing appeal

“Sufficient reasons” for Condonation of Delay

- ☐ 1. Wrong advice given to the appellant – *R.Ranganayaki Ammal 38 ITR 20 (Mad.)*
- ☐ 2. Delay due to the mistake of the income tax officer stating in the demand notice that the appeal lies with the Appellant Assistant Commissioner (AAC) instead of the Tribunal- *Avtar Kishan Dass 133 ITR 338 (Del.)*
- ☐ 3. Conflicting legal advices - *Smt.Laxmi Devi AIR (1988) (All.) 133*
- ☐ 4. If the mistake was committed by the Counsel in filing the appeal before a wrong forum –*AjibSingh AIR (1989) (Punj.) 153*
- ☐ 5. Where the managing partner of the assessee’s firm was hospitalised and so couldn’t contact the concerned auditors in time for filing appeals.- *74 TTJ 458 Coch*

Payment of Tax due before filing Appeal

- ❑ Sec 249(4)(a) provides that no appeal shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due on the income returned by him. As per the sec.249 (4)(b), where no return is filed, amount equal to the amount of advance tax which was payable by him has been paid. The proviso to sec. 249(4) provides for exemption of payment if the case is covered by sec. 249(b) and the CIT (Appeals) is satisfied as to good sufficient cause.
- ❑ The provision of sec. 249(4) is mandatory.
 - ❖ a. *CIT v Rama Bodybuilders (2001) 117 Taxman 68 (Del.)*
 - ❖ b. *Filmistan Ltd. 42 ITR 163 (SC)*
 - ❖ c. *T Gopindappa Setty v ITO 231 ITR 892 (Kar.)*

Withdrawal of Appeal

- ❑ The assessee, having filed an appeal and brought the machinery of the Act into operation, can't prevent the first appellate authority from asserting and settling the real sum to be assessed, by intimation for his withdrawal of appeal. Even if the assessee refuses to appear at the hearing, the first appellant authority can proceed with the inquiry and if he finds that there has been an under-assessment, he can enhance the assessment- *CIT v Rai Bahadur Hardutoy Motilal Chamaria(1967) 68 ITR 443(SC)*.
- ❑ However, the Bombay High Court in case of *Jagmondas Gokaldas v CWT (1963) 50 ITR 578* has held that “true, an appellant can't as a matter of right claim to withdraw an appeal but there is nothing illegal in doing so with the permission of Appellate Authority”.

Appeal to Commissioner (Appeals) – Stay Application before AO

- ❑ **Power of Assessing Officer:** As per section 220(6), where an assessee has presented an appeal u/s 246A, Assessing Officer may treat the assessee as not being in default in respect of the amount in dispute in the appeal.
- ❑ **It may be applied –**
 - ❖ ● at the discretion of the Assessing Officer;
 - ❖ ● subject to such conditions as Assessing Officer may think fit to impose;
 - ❖ ● even though the time for payment has expired;
 - ❖ ● as long as such appeal remains undisposed of.
- ❑ Where assessee has not made an application u/s 220(6) or his application u/s 220(6) has been rejected, **he can approach the appellate authority for stay order against collection**

Appellate Authority to stay recovery of demand of dues

- ☐ The power of the Appellate Authority to stay recovery of demand of dues, which are the subject matter of the appeal pending before him, is independent of the provisions of sec.220(6) and
- ☐ It is not necessary that before invoking the power of the first Appellate Authority, an assessee should approach the Assessing Officer u/s. 220(6) or that the AO must reject the prayer of the assessee for stay of demand.

Appeal to Commissioner (Appeals) / Procedure for disposal of Appeal by CIT(Appeals)

- ❑ **1. Fixation of Day & Place:** The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.
- ❑ **2. Hearing:** The appellant (either in person or by an authorised representative) and the Assessing Officer (either in person or by an authorised representative) shall have the right to be heard at the hearing of the appeal.

Tax point: Where the assessee does not insist on a personal hearing the appeal may be decided on the basis of written submission made by him. [Letter No. 277/7/84 of November, 1985]

- ❑ **3. Adjournment:** The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

Appeal to Commissioner (Appeals) / Procedure for disposal of Appeal by CIT(Appeals)

- ❑ **4. Inquiry:** The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the AO to make further inquiry and report the result of the same to the Commissioner (Appeals).
- ❑ **5. Order:** Commissioner (Appeals) must dispose of the appeal by passing an order which shall –
 - ❖ • *be in writing;*
 - ❖ • *mention the points for determination;*
 - ❖ • *mention the decision thereon; and*
 - ❖ • *mention the reason for the decision.*
- ❑ **Time limit for disposal of appeal:** Within 1 year from the end of FY year in which appeal is filed .

Appeal to Commissioner (Appeals) / Procedure for disposal of Appeal by CIT(Appeals)

- ❑ **6. Communication of Order:** The Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the PrCCIT or CCIT or PrCIT or CIT.
- ❖ *Note: If during pendency of an appeal, provision of any law has changed with retrospective effect, then such changed law shall be applicable on such appeal too. Law amended retrospectively would be a good law for applicability during the pendency of the appeal*
- ❑ **New grounds during hearing:**
 - ❖ The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the 'grounds of appeal',
 - ❖ if he is satisfied that the omission of that ground from the Form of appeal was not willful or unreasonable.

Time Limit of Hearing of Appeal

- ❑ Subsection (6A) to the section 250 has been introduced w.e.f. 1st June, 1999 which puts condition where it is possible, the CIT (A) may hear and decide such appeal within a period of 1 year from the end of a financial year, in which such appeal is filed before him under subsection (1) of section 246A. The language employed in the subsection is of directory nature and is not mandatory.
- ❑ • As per CBDT's Instruction no.1089 dated 20th August, 1987 and Instruction no.1411 dated 15th September, 1981, the Appellate Authorities should pass an Appellate Order in all cases within 10 days after the final hearing and in all duly heard cases before relinquishing charge on transfer or proceedings on leave.

Appeal to Commissioner (Appeals) / Procedure for disposal of Appeal by CIT(Appeals)

-
- ❑ **Production of additional evidence:** Appellate authority has the power to accept additional evidence (after recording reason for its admission in writing) and may make further enquiry at his discretion before disposing of the appeal
 - ❑ **Additional Evidence:** The Commissioner (Appeals) has a discretionary power to admit fresh or additional evidence subject to Rule 46A. The rule 46A requires the appellant to fit his case within the conditions specified therein for additional evidence which are as under:
 - ❖ a. The AO has refused to admit evidence which ought to have been admitted.
 - ❖ b. The assessee was prevented by sufficient cause from submitting the evidence in the assessment proceedings.
 - ❖ c. The AO has made assessment order without giving sufficient opportunity to the assessee.

Tax point: Before taking into account the additional evidence filed, CIT(Appeals) is to provide reasonable opportunity to the AO for examining the same or the witness as well as to produce evidences to rebut additional evidences filed by the tax payer.

Appeal to Commissioner (Appeals) / Procedure for disposal of Appeal by CIT(Appeals)

Production of additional evidence; Contd.

- ❑ The Appellate Authority has all the powers which the original authority may have in deciding the question before it prescribed by the Statutory provisions. Rule 46A is regulatory in the matter of admission of additional evidence and not a fetter on the powers of the First Appellate Authority.
- ❑ Further, the Commissioner (Appeals) shall allow the additional evidence of the recording the reasons in writing and giving reasonable opportunity to the AO.
 - ❖ a. *Smt. Mohindar Kaur v. Central Government 104 ITR 120 (All.)*
 - ❖ b. *Smt. Prabhavati S. Shah v. CIT [1998] 231 ITR 1 (Bom.)*
 - ❖ c. *Unnikrishnan v CIT 233 ITR 485 (Ker.)*

Additional Ground during Hearing

- Section 250 (5) says that the First Appellate Authority may at the hearing of an appeal allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.
 - 1. Jute Corporation of India Ltd. v CIT (1991) 187 ITR 688(SC)
 - 2. National Thermal Power Co. Ltd. v CIT 229 ITR 383(SC)
 - 3. Ahmedabad Electricity Co. Ltd. v CIT 199 ITR 351(Bom.)
 - 4. Jaora Sugar Mills Pvt. Ltd v CIT (1980) 124 ITR 482 (M.P.)
 - 5. CIT v Western Rolling Mills Pvt. Ltd. (1985) 156 ITR 54 (Bom.)

Appeal to Commissioner (Appeals) / Powers of Commissioner (Appeals) u/s 251

- ☐ **1. Against an order of assessment:** To confirm, reduce, enhance or annul the assessment
- ☐ **2. Against an order imposing a penalty:** To confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
- ☐ **3. Against the order of assessment in respect of which the proceeding before the Settlement Commission abates u/s 245HA:** To confirm, reduce, enhance or annul the assessment after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record
- ☐ **4. Relating to any other case:** To pass such orders as he thinks fit.

Appeal to Commissioner (Appeals) / Powers of Commissioner (Appeals) u/s 251

Notes: CIT Appeal

- ❖ 1. may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that **such matter was not raised before him by the appellant.**
- ❖ 2. shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a **reasonable opportunity of showing cause against such enhancement or reduction.**
- 3. An assessment order, which is void ab initio cannot become a valid order simply by virtue of the fact that it has been confirmed by an appellate authority.
- 4. Appeal once filed cannot be withdrawn.

Q&A

