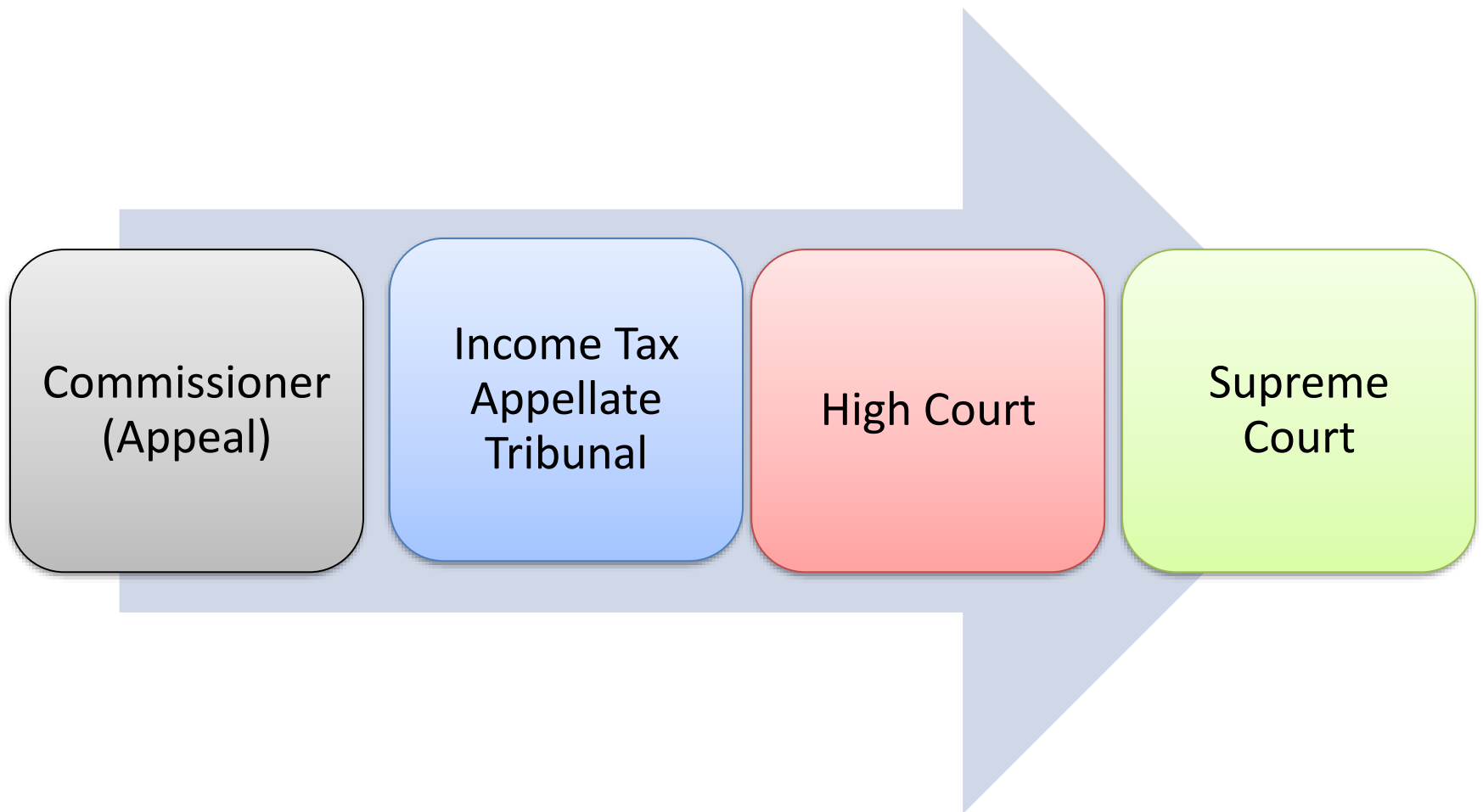


Appeal and Revision in Income tax Act- Role of CMA

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Route of Revenue Cases



Sections covered Appeal and Revision

- Section 246 – 251
 - Section 252- 256
 - Section 260A – 260B
 - Section 261- 262
 - Section 263- 264
- Appeal before the Commissioner (Appeal)
 - Appeal to the Appellate Tribunal
 - Appeal to High Court
 - Appeal to Supreme Court
 - Revision of Orders

Steps Involved

Appealable Orders

- To decide whether the order passed by the AO is appealable before the CIT (Appeal) or not.
- To decide whether the order passed by CIT(Appeal) is appealable before the ITAT or not. Similarly order passed by ITAT before the High court and Order passed by High Court to the Supreme Court is appealable or not.

Filing of Appeal

- Filing of Appeal before the CIT (Appeal), ITAT, High Court, Supreme Court
- Accompanied with Ground of Appeal, fee of appeal filing, Cross Objection etc, .

Hearing and Pronouncement of Order

- Communication of date of hearing by the court.
- Pronouncement of order after heard of both Appellant and Respondent.

Appealable Orders to file appeal before the Commissioner(Appeal) u/s 246A

- Section 115VP(3)(ii)
- Section 143(1),(1B),(3)
- Refusing to approve the option for tonnage tax scheme.
- Regular Assessment order passed or /intimation by the AO in response to return filled u/s 139 or 142(1) or by CPU(Central Processing Unit)

Appealable Orders to file appeal before the Commissioner(Appeal) u/s 246A

- Section 200A(1)
- Section 206CB(1)
- Section 144
- Section 144BA(12)
- Processing of statement of Tax deducted at source
- Processing of statement of Tax collected at source
- Best judgment assessment order
- Reference to Principal commissioner in certain cases.

Appealable Orders to file appeal before the Commissioner(Appeal) u/s 246A

- Section 115WE(3)
 - Section 115WF
 - Section 115WG
 - Section 147
- Assessment order passed by the AO against return of fringe benefit tax
 - Best judgment of fringe benefit
 - Fringe benefits escaping assessment
 - Income escaping assessment i.e reassessment, re computation

Appealable Orders to file appeal before the Commissioner(Appeal) u/s 246A

- Section 150
- Section 153A
- Section 92CD(3)
- Section 154
- Re assessment or re computation in consequence to order passed by way of appeal, court
- Assessment in case of search or requisition
- Order passed to advance pricing agreement.
- Rectification Order

Appealable Orders to file appeal before the Commissioner(Appeal) u/s 246A

- Section 155
- Section 163
- Section 170(2),(3)
- Section 171

- Other amendments
- Treating the assessee as the agent of non-resident
- Succession to business otherwise than on death.
- Assessment order after participation of HUF

Appealable Orders to file appeal before the Commissioner(Appeal) u/s 246A

- Section 201
- Section 206C (6A)
- Section 237
- Section 221, 271,271A,272,275 ,158BFA, 271B, 271BB, 271C, 271CA, 271D,271E,272A, 272AA
- Consequences of failure to deduct tax or pay the deducted tax at source
- Consequences of failure to collect tax or pay the collected tax at source
- Refund claimed not paid or short paid
- An order imposing a penalty

Form of Appeal and Procedure

- Appeal shall be filed in **Form No. 35**, shall be filled **electronically**.
- Appeal shall be filed within **30 days** of the service of notice or in case of order u/s 248, the date of payment of tax
- Fee shall be Rs. **250/-** if amount of total income computed by AO is Rs. **1 lakhs**. Rs. **500/-**, if computed income is Rs. **1 lakh to Rs. 2 lakh**, Rs. **1000/-**, if computed income is **more** than Rs. **2 lakh**. If computed income is **less than Rs. 1 lakh or nil**, fee shall be Rs. **250/-**

Form of Appeal and Procedure

- Facts of case, Grounds of appeal, Pray for stay of demand till disposal of case, **pre-deposit, 20% of demand.**
- CIT(Appeal) shall fix date and place of hearing and give notice to both, appellant and AO.
- After heard of both, order shall be passed by the commissioner (Appeal).

Appeal to Appellate Tribunal, Sec.253

- Aggrieved party may file an appeal against the order passed by CIT(Appeal).
- Appeal shall be filed to ITAT in form **No. 36** within **60** days of service of order.
- Fee shall be **Rs. 500/-**, if demand is up to **Rs. 1 lakh**. Or **Rs. 1000/-**, if demand is from **Rs. 1 lakh to Rs. 2 lakh**, or **1% of demand or maximum Rs. 10000/-** if demand is more than **Rs. 2 lakhs**.
- An Application for stay demand shall be accompanied by a fee of **Rs. 500/-**

Appeal to Appellate Tribunal, Sec.253

- Form 36, shall be filed in triplicate, accompanied with 2 copies at least one should be certified copy of appeal order, 2 copies of relevant Assessing Officer order, 2 copies of grounds of appeal or grounds of objection.
- Memorandum of cross-objection shall be filed in Form No. 36A, in triplicate, within 30 days from the date service of notice by ITAT. No fee is required to be paid.
- Before of one day of date of hearing fixed/listed by ITAT, appellant may filed paper book, containing relevant evidence, proof facts and other papers, etc.,
- Bench of Appellate tribunal shall heard the both and may pass order within 4 years from the date of filling the appeal to ITAT.
- The ITAT have all the powers which are vested in income tax authority u/s 131, and any proceedings before the ITAT shall be deemed judicial proceeding within the meaning of sec. 193 and 228 of Indian Panel Code and appellate tribunal shall be deemed to be a Civil court for all the purposes of sec. 195 of the code of Criminal Procedure.

Statement of case to the High Court, Sec. 256

- The Assessee or Principal commissioner or commissioner, may within **60** days of the date of order served by ITAT in **Form No.37** by accompanied a fee of Rs.200 to the ITAT and require the ITAT to refer to the High court any question of law arising out of such order.
- ITAT shall within **120** days draw up a statement of the case and refer to the High court.
- If ITAT refuse the application on the ground that there is no question of law arise, then assessee or commissioner as the case may be, shall within **Six months** apply to the High court.
- A bench of **two judges** of High court shall heard the case.

Statement of case to the Supreme Court, Sec. 257

- If, on an application u/s 256, the Appellate tribunal is of the opinion that, on account of a conflict in the decisions of High courts in respect of any particular question of law, it is expedient that a reference should be made direct to Supreme court.

Appeal to High Court, Sec. 260A

- An appeal shall lie to the High court from every order passed in appeal by the Appellate tribunal, if High court is satisfied that the case involves a substantial question of Law.
- The word 'substantial question of Law' have not been defined. But the expression has acquired connotation through a catena of judicial pronouncements. Usually five tests are used to determine whether a substantial substantial question of Law involved.

Appeal to High Court, Sec. 260A

- i) whether, directly or indirectly it effects substantial rights of the parties
- ii) the question is of general public importance
- iii) whether it is an open question in the sense that issue has not been settled by pronouncement of the supreme court or the Privy Council or by the Federal court
- iv) the issue is not free from the difficulty, and
- v) it calls for a discussion for alternate view.

Appeal to High Court, Sec. 260A

- CIT or assessee aggrieved by any order of ITAT may file appeal to High Court within **120** days from the date order received, along with a memorandum of appeal precisely stating therein the substantial question of law involved.
- When High court is satisfied that a substantial question of law is involved, it shall formulate the question.
- The appeal shall be heard only on the question so formulated.
- It shall be heard by a bench of **two judges**.

Appeal to Supreme Court, Sec.261

- An appeal shall lie to the supreme court from any judgment of the High court delivered in any case which High court certifies to be fit one for appeal to the Supreme court.
- Provisions of the Code of Civil Procedure, 1908 relating to appeals u/s section 261 shall apply.

Revision of orders prejudicial to revenue, Sec. 263

- The Principal commissioner or commissioner may call for the and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the AO is erroneous and is prejudicial to the interest of the revenue, he may directing for fresh assessment.
- Revision order shall be passed within a period of **two years** form the end of F.Y. in which the order passed.
- Order of revision in consequence of direction by ITAT, High court or Supreme court, shall be passed any time.

Revision of other orders, Sec. 264

- In any other order other than order to which sec.263 applies, commissioner may, either suo motu or on an application by the assessee for revision, call the record of any proceeding and revise the order.
- No order shall be passed suo motu by the commissioner more than one previous year.
- Assessee shall file application within a period of one year from the date on which he has served the order.
- Commissioner shall not pass revision order if case is pending for disposal before the court of any commissioner (Appeal), ITAT.
- Every application shall be accompanied with a fee of Rs. 500/-.
- Order under this section shall be passed within one year from the end of f.y. in which application made.

Role of CMA. Whether CMA can plead before the Income Tax Authority on Behalf of Assessee ?

- Yes...
- Section 288(2)(V) , Read with Rule 50C (3),empower the CMA to appear before the AO, Commissioner (appeal), Principal Commissioner or Commissioner and Income Tax Appellate Authority.
- The income tax Appellate Tribunal, like any judicial body, has a number of procedural requirements that are require to comply by the authorized representative.

Role of CMA. Whether CMA can plead before the Income Tax Authority on Behalf of Assessee ?

- Some important procedure as per Income Tax Appellate Tribunal Rules, 1963 are...
- Every memorandum of appeal to be **written in English** and shall forth, concisely and under distinct heads, grounds of appeal without any argument or narrative, and such grounds shall be numbered consecutively.
- Submission of paper books at least one day before the date of hearing. At least four set prepared.
- An application for condonation for delay in filing of appeal along with affidavit for reason of delay thereof.
- **Dress code (Rule 17)**. Male CMA , a suit with a tie or button -up coat over a pant. The color of coat must, preferably Black or dark blue. In case of female CMA, black coat over white or any other sober color saree or Salwar Suit.
- Furnished power of attorney in **a non judicial stamp paper** value specified in relevant state stamp Law. In Jharkhand it require on **Rs. 100** value.



Dress Code for
ITAT

Stay at home and be safe
from Corona.

Thanks to all participants, team of
Tax research department, IT team
of the Institute. Please give your
feedback. You can raise your query
through help desk of Taxation in
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