

PRACTICAL ASPECTS OF
APPEALS BEFORE
CIT(A)

UNDER THE INCOME TAX ACT, 1961

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“Meaning of Appeal”.....

- ❑ In Wharton’s Law Lexicon – *The word “appeal” is defined as the judicial examination of the decision by an higher court of the decision of an inferior court.*
- ❑ Appeal means the removal of cause from an inferior to a superior court for the purpose of testing the soundness of the decision of the inferior court.
- ❑ It is a remedy provided by the law for getting a decree of lower court or authority corrected when a party to a litigation is aggrieved.

Appeal Stages & Hierarchy

First
Appeal

Commissioner of Income Tax (Appeals)
[CIT (A)] [u/s 246A-250]

Second
Appeal

Income Tax Appellate Tribunal
[ITAT] [u/s 252-255]

Appeal to
High
Court

U/s 260A-260B of the Act

Appeal to
Supreme
Court

U/s 261-262 of the Act

First Appeal – Commissioner of Income Tax (Appeals)

U/s 246A to 250 of the Income Tax Act, 1961

Important points to be considered.....

- Ensure whether authority passing the order had jurisdiction to pass the order.
- Ensure whether order was passed within limitation period.
- Check whether Order is Appealable.
- Ascertain the authority before whom appeal lies.
- Carefully study the appealable order and find out the differences between return of income and assessment order.
- Avoid filing frivolous appeals as there is a power of enhancement with the CIT(A).
- Appeal against the penalty order can be filed even if the appeal against the assessment order has not been filed.
- Ascertain the limitation period within which appeal is to be filed.
- File application for condonation, if there is any delay.
- Check computation of income and tax and interest computed thereon

Important points to be considered.....

- ❑ Widest possible grounds should be taken in appeal.
- ❑ Alternative plea should be checked for, taken as without prejudice to grounds.
- ❑ Grounds should not be argumentative.
- ❑ Statement of facts ought to be framed with clarity.
- ❑ Person filing should be eligible to file and sign the appeal in case of non digital.
- ❑ Ensure as to who is the respondent.
- ❑ Compliance of penalties to be made for stay of proceedings
- ❑ File application for stay as and where required.
- ❑ Ensure that fee for appeal is paid under appropriate head and sub head.
- ❑ Certified copy of challan evidencing payment of appeal fee to be filed.
- ❑ Online appeal should accompany challan, assessment order, annexures of grounds of appeals; if any and additional evidence; if any.

Issues on Demonetisation

- Whether during assessment the books of accounts have been rejected
- As per books what is the source of the cash deposit
- Whether the credit for reduction in inventory is being provided by the AO if the cash is due to sale of goods
- In respect of trade advances, whether the goods have been delivered in due course
- Whether the amount has been credited in the books of accounts of the assessee.
- Whether the money deposited during demonetisation was withdrawn from the same

Issues on Demonetisation

Contd.....

- Cash deposit made by debtors and purchase parties in bank account of assessee in other cities
- Maintenance of books of accounts necessary for addition U/s 68
- If addition is made U/s 69A and the amount is duly recorded in books then no explanation is required for such transaction
- Whether PAN, address, ledger accounts of the debtors submitted during assessment.
- Bank statement and bank passbook do not constitute to be books of account.

Instruction 3/2017

Dt 21/02/2017

No further verification required:

- Individual with no business and cash deposit < Rs. 2.5 lakh
- Individual with no business, above 70 years and cash deposit < Rs. 5 lakh

Books maintained – No further verification required

- Cash deposit out of opening balance < cash balance as at 31-03-2016 in ITR for AY 2016-17

The above is not applicable if the AO has a reason to believe that cash balance as on 31-03-2016 has been increased by revising the return or backdating the transactions.

AO may seek relevant information e.g. monthly sales summary (with breakup of cash sales and credit sales), relevant stock register entries, bank statement etc. to identify cases with preliminary suspicion of back dating of cash sales or fictitious sales.

Some indicators for suspicion of back dating of cash sales:

- **Abnormal jump I the cash sales** during the period Nov to Dec 2016 as compared to earlier history.
- **Abnormal jump in percentage of cash sales** to **unidentifiable persons** as compared to earlier history.
- **More than one deposit of specified bank notes** (SBN) in the bank account late in the demonetization period.
- **No availability of stock** or attempts to inflate stock by introducing fictitious purchases
- **Transfer of deposited cash to another account**/entity which is not in line with earlier history

Issues on Demonetisation

Contd.....

- **Kishore Jeram Bhai Khaniya Vs ITO (ITAT Delhi) (ITA NO. 1220/Del/2011)** as long as stock is available and nothing adverse against the cash memo is found then cash sale cannot be doubted. Cash sale is offered as income hence the same can not be added U/s 68 (double addition)
- **R.B. Jessaram Fatehchand Vs CIT [1970] 75 ITR 33 [Bombay]** assessee is not bound to maintain name and address of buyers in cash sale
- **CIT Vs Vishal Exports Overseas Ltd (Appeal No. 2471)[Gujrat][2009]** when the assessee had already offered sales realization and income is accepted by the AO, addition of the same amount can not be made.
- **Mr. Pradeep Jain Vs ITO [ITAT-Delhi]** when the assessee filed return U/s 44AD then books of accounts are not required. If AO does not have sufficient evidence to justify addition of cash in hand then no addition can be made.

Issues on Demonetisation

Contd.....

- ACIT Vs Baldev Raj Charla 121 TTJ 366 [Delhi ITAT] merely because there was timegap between the cash withdrawal and cash deposit the explanation of assessee can not be rejected, addition cannot be made until the AO or the CIT has recorded a finding that the cash has been used for other purposes than cash deposit.
- ITO vs. Pankaj Aggarwal [ITA No. 7091/Del/2014][Delhi ITAT] only profit margin to be added on cash deposit made out of cash sale.
- Racmann Springs Pvt Ltd Vs DCIT [1995] 55 ITD 159 [Delhi] realization from debtors do not constitute to be cash credits.

Outline of First Appeal filed before CIT (A)....

- ❑ **Against** the order of Assessing Officer
- ❑ **Who can prefer appeal** – Aggrieved assessee
- ❑ **Time Limit** – within 30 days from the **date of receipt** of the appealable order. Delay for bona-fide reasons may be condoned by the CIT (Appeals).
- ❑ **Application Form** – Form 35 to be filed electronically in specified cases.

Relevant Sections

Section	Brief
246A	Appealable order before the Commissioner (Appeal)
248	Appeal by person denying liability to deduct tax
249	Form of Appeal and Limitation
250	Procedure in appeal
251	Power of the Commissioner (Appeals)

Relevant Rules to Appeals.....

Rule of Income Tax Rules, 1962	Brief	Remarks
Rule 45	Form of Appeal to Commissioner(Appeals)	Form No. 35
Rule 46	Mode of service of Order	Order referred u/s 249(2)(c) shall be served in manner as specified in section 282
Rule 46A	Production of Additional evidence before Commissioner (Appeals)	<i>(refer next slide)</i>

E-filing of Form No. 35 is introduced by Notification No. 11/2016 dated 1st March, 2016

Sec.246A – Appealable Orders

- ❑ Order by Jt. CIT u/s 115VP (3)(ii)
- ❑ An order against assessee who denies his liability to be assessed under the Act
- ❑ Intimation u/s 143(1)/(1B) or 200A(1) or w.e.f. 01-06-2015, F. Act, 2015 section Section 206CB
- ❑ Order u/s 143(3) / 144, 154 or 155.
- ❑ Order u/s 115WE(3)/ 115WF, 115WG
- ❑ Order u/s 147 or 150
- ❑ Order u/s 153A

Note: Order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in Sec.144BA (12) are not appealable before CIT(A)

Sec.246A – Appealable Orders.... contd...

- ❑ Order u/s 92CD [relating to Advance Pricing Agreement]
- ❑ Order u/s 163 or 170 (2)/(3) or 171 or 186(1)/(2) or 201 or 206C(6A) or 237
- ❑ Order u/s 185 (1)(b)/(2)/ (3)/(5) or 158BC
- ❑ Order imposing penalties under various sections
- ❑ Order by AO other than Dy. CIT under 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.

Note: Order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in Sec.144BA (12) are not appealable before CIT(A)

Section 248- Appeal by a person denying liability to deduct tax in certain cases...

Where under an agreement or other arrangement, the tax deductible on any income, other than interest u/s 195 is to be borne by the person by whom the income is payable, and 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.

Issues- Section 248

- ❑ ITO vs. CMS (India) Operations & Maintenance Co. (P.) Ltd. [2013] 38 taxmann.com 92 (Chennai - Trib.)

Held that _ Sec. 248 does enable an assessee to file an appeal even after deduction of tax at source claiming that no tax was required to be deducted at source since such appeal is only for a declaration regarding tax liability, if any.

- ❑ DCIT (International Taxation vs. Abu Dhabi Ship Building PJSC, [2016] 70 taxmann.com 224 (Mumbai – Trib)

Held that _ the order passed by the AO u/s 195(2) cannot be challenged before Commissioner (Appeals) u/s 246A as there is a specific provision u/s 248 for filing appeal against such order.

Section 249(1) – Fees for filing of Appeal....

S. No.	Particulars	Amount
1	Assessed total income Rs.1 lakh or less	Rs.250/-
2	Assessed total income more than Rs.1 lakh but not more than 2 lakh	Rs.500/-
3	Appeals involving total assessed income of more than Rs.2 lakhs	Rs.1000/-
4	Appeals involving any other matter	Rs.250/-

Section 249(2) - Limitation of Appeal

Appeal by the person denying liability to deduct tax u/s 248	within 30 days from date of payment of taxes
Appeal against assessment of penalty	within the 30 days from date of service of demand relating to the assessment/ penalty

Where an application has been made u/s section 270AA(1), the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee, shall be excluded [Proviso inserted by Finance Act, 2016 w.e.f. 01-04-2017] i.e. relevant to AY 2017-18 onwards.

Sec. 270AA(1) An assessee may make an application to AO to grant immunity from imposition of penalty u/s 270A & initiation of proceedings u/s 276C/ 276CC, if he fulfils the following conditions, namely:—

- (a) tax & interest payable as per order u/s 143(3)/ 147 has been paid within the period specified in such notice of demand; &
- (b) no appeal against such order has been filed.

Section 249(2) - Limitation of Appeal

Appeal in any other case

within 30 days from date on which intimation of order sought to be appealed against is served.

Section 268 – Exclusion of time taken for copy.

In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

- ❑ **CIT Vs. Karnani Industrial Bank Ltd. [1978] 113 ITR 380 (Cal.)** Where an assessee was served a notice of demand which did not include interest and subsequently another notice of demand was served including interest, the period of limitation would begin from the date of service of second notice of demand.

Issues on Limitation of Appeal

- ❑ **CIT Vs. Karnani Industrial Bank Ltd. [1978] 113 ITR 380 (Cal.)** Where an assessee was served a notice of demand which did not include interest and subsequently another notice of demand was served including interest, the period of limitation would begin from the date of service of second notice of demand.

Section 249(3) – Condonation of Delay

- The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.**
- Reasons must be recorded for granting condonation of delay
- Order refusing the condonation of delay must be a speaking order
- Order condoning delay cannot be rectified by the first appellate authority
- Appeal may be filed against order refusing to condone delay
- Delay due to the change in address may be condone
- Delay due to illness may be condone

Issues on Condonation of Delay

- ❑ Senior bhosale estate (HUF) v.s ACIT, Civil Appeal No. 6677-6690[2019] if the appellant had no knowledge about the passing of order, then the indulgence should be shown by condoning the delay
- ❑ M/s Procon instrumentation Pvt. Ltd., Chennai-2 vs ACIT,[Madras][2016] while dealing with the petitions for condonation of delay, pedantic approach should not be adopted.
- ❑ M/s Eswaran & Sons Engineers ltd V.s ACIT [Madras][2017] rules of limitation are not meant to destroy the rights of parties, in fact are meant to see that parties do not resort to dilatory tactics bt seek their remedy properly.
- ❑ Hussan lal puri V.s CIT [P&H][2016] department contended that order was dispatched at last known address, however the appellant has not received the order and the department fails to produce the delivery acknowledgment.

Issues on Condonation of Delay

- ❑ **Aakash lavlesh leisure Pvt. Ltd. v.s ITO [SC][2019]** sufficient reason for condonation was filed with the appeal which ought to have been accepted by the court. Condonation should be granted.
- ❑ **Voltas Ltd. Vs. DCIT [2000] 241 ITR 471 (AP)** The power of condonation is expected liberally so as to advance the cause of justice.
- ❑ **Anant B. Shinde (HUF) Vs ITO [2014] 42 taxmann.com 212 (Bombay)** Held that that CIT(A) as well as Tribunal ought to have taken the liberal view and condoned the delay in filing the appeal where assessee sought condonation of delay stating that (i) his mother was not keeping good health for last many years and died on 23-12-2008, and (ii) he was only person to look after his mother. Thus, delay in filing appeal deserved to be condoned.

Issues on Condonation of Delay

- ❑ **CIT vs. S. Duraipandi [2014] 52 taxmann.com 90 (Madras)** Held that _ where assessee faced financial hardship to pay tax due at relevant time and after making sufficient arrangements of funds could pay tax due, delay was to be condoned.
- ❑ **Satbarg Singh vs. ITO, [2015] 61 taxmann.com 46 (Chandigarh – Trib)** It was held that in order to constitute reason for delay in filing appeal, illness must be at time of expiry of limitation; if assessee/appellant was ill but got alright, there cannot be any excuse for delay in filing appeal. There being no evidence on record to show that assessee was prevented by sufficient cause from filing appeals before Commissioner (Appeals) could not be condoned and, accordingly, appeals were to be dismissed.

Section 249(4) – Amount of tax payable before filing appeal

No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—

- (a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or
- (b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

Provided that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.

Issues on Section 249(4)....

❑ CIT vs. Pramod Kumar Dang [2014] 42 taxmann.com 301 (Delhi)

The rationale behind Sec. 249(4) appears to be that where an Assessee has filed a return of income, then the tax which is admittedly payable by the Assessee should be paid prior to the hearing of any appeal filed by the Assessee. The rationale seems very logical for the reason that no Assessee can be heard in an appeal where the tax which is admittedly payable by the Assessee is outstanding. It is to enforce payment of tax on admitted income.

Where the Assessee either has paid the tax on the returned income or sought adjustment of the amount admittedly lying with the revenue towards the tax payable on the returned income, the Assessee cannot be denied a hearing.

Issues on Section 249(4)....

❑ **Corporation Bank vs. ITO (TDS), [2016] 67 taxmann.com 67 (Karnataka)**

It was held that since Section 249(4) imposes a duty upon the assessee to deposit the entire amount of advance tax before its appeal can be admitted, it cannot escape from its liability to follow the mandate of Section 249(4). Although Instruction No. 1914 does create exemption to Section 249(4), the assessee cannot take any benefit from Instruction No. 1914, if it does not come within the ambit and scope of the said instruction.

❑ **Mohammed Farooque Sarang vs. DCIT, [2017] 81 taxmann.com 374**

(Mumbai - Trib.) Commissioner (Appeals) not admitted appeal filed by assessee by referring to clause (a) of section 294(4) due to non-payment of tax on income declared in return, since assessee had paid tax on returned income before passing of said order by Commissioner (Appeals), impugned order refusing to admit appeal was to be set aside.

Sec.250 - Procedural aspects of Appeal

- ❑ Commissioner (Appeals) shall give notice to the assessee and to the AO regarding fixation of day & place of hearing.
- ❑ The appellant in person or through his AR and the AO or his AR shall have right to be heard.
- ❑ CIT (A) has powers to adjourn the hearing from time to time.
- ❑ Before disposing of the appeal, the CIT (A) has power to make further inquiry or may direct the AO to further inquire and report the same.
- ❑ Entertain new ground of appeal – the Commissioner (Appeals) may at the time of hearing, allow the appellant to go into Additional ground of appeal not specified in the ground of appeal, if he is satisfied that the omission was not willful or unreasonable.

Sec.250 - Procedural aspects of Appeal

- ❑ Order of the CIT(A) shall be in writing stating the point for determination, the decision thereon and the reason for the decision.
- ❑ Disposal of appeal: the CIT(A) may, where it is possible, may hear and decide the appeal within a period of one year from the end of the financial year in which appeal is filed u/s 246A of the Act.
- ❑ Communication of order passed: on disposal of appeal, the CIT(A) shall communicate the order passed to the assessee and to the Chief Commissioner or Commissioner.
- ❑ CIT vs. Premkumar Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay) It was held that law does not empower Commissioner (Appeals) to dismiss appeal for non-prosecution.

Section 251- Power of CIT(A)

- ❑ To confirm, reduce, enhance or annul the assessment.
- ❑ To confirm, reduce, enhance or annul the assessment in respect of assessment in pursuance to abatement of proceeding before the Settlement Commission u/s 245HA after taking into consideration all the material and other information produced before the Settlement Commission and such other material as may be brought on his record.
- ❑ To confirm or cancel or enhance or reduce the penalty against order of penalty.
- ❑ To allow reasonable opportunity of being heard in case of enhancement of assessment/ penalty or reduction of refund.

Section 251- Power of CIT(A)

- To grant adjournments
- To exercise powers u/s 131
- To pass order on alternate plea
- To admit additional ground and decide the additional ground
- To admit additional evidence filed by the appellant
- To rectify apparent errors in the order

Rule 46A- Circumstances under which the Appellant shall be entitled to produce additional evidences before CIT(A).....

- ❑ where the AO 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 AO; or
- ❑ where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal; or
- ❑ where the AO has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Rule 46A.....

Sub-rule (2)

No evidence shall be admitted under sub-rule (1) unless the CIT(A) **records the reasons for its admission in writing.**

Sub-rule (3)

The CIT(A) shall not take into account any evidence produced under sub-rule (1) unless the **AO has been allowed a reasonable opportunity—**

- a. to examine the evidence/ document or to cross-examine the witness produced by the appellant, or
- b. to produce any evidence/ document or any witness in rebuttal of the additional evidence produced by the appellant.

Rule 46A.....

Sub-rule (4)

Nothing contained in this rule shall affect the power of the CIT(A) to direct the production of any document, or the 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.)

Issues on Rule 46A

Contd.....

- ❑ **CIT vs Pradyuman M. Patel [2014] 41 taxmann.com 405 (Gujarat)**
Non allowance of opportunity by CIT(A) to AO to cross-examine witnesses examined in exercise of powers under Rule 46A(4) of IT Rules would be in violation of principles of natural justice.
- ❑ **DCIT vs Yog International (P.) Ltd. [2013] 36 taxmann.com 47 (Lucknow - Trib.)** AO to be afforded with opportunity to examine additional evidence under Rule 46A
- ❑ **CIT vs. E. D. Benny, [2015] 62 taxmann.com 302 (Kerala)** It was held that Commissioner (Appeals) is under statutory obligation to put additional evidence taken on record by him to Assessing Officer even if additional evidence produced by assessee are in nature of clinching evidences leaving no further room for any doubt or controversy.

Issues on Rule 46A

- ❑ **Income-tax Officer, vs. Hind Supply Corporation[2017] 85 taxmann.com 280 (Kolkata - Trib.)** Non allowance of opportunity by CIT(A) to Assessing Officer for verifying veracity of certificate filed by assessee as additional evidence before Commissioner (Appeals),
- ❑ **Punjab Institute of Medical Sciences vs. DCIT, [2017] 82 taxmann.com 172 (Punjab & Haryana)** It was held that Commissioner (Appeals) is under statutory obligation to put additional evidence taken on record by him to Assessing Officer even if additional evidence produced by assessee are in nature of clinching evidences leaving no further room for any doubt or controversy.
- ❑ **Lakshmi Energy & Foods Ltd. vs ACIT [2014] 44 taxmann.com 248 (Chandigarh - Trib.)** Where assessee had reasonable preventing it from producing various documents before AO, documents to be admitted as additional evidence.

Issues on Rule 46A

Contd.....

- ❑ **CIT vs. Dharamdev Finance (P.) Ltd. [2014] 43 taxmann.com 395 (Gujarat) Held that** there was no violation of rule 46A as remand report was obtained by CIT(Appeals) from the AO and fullest opportunity was made available to both the sides. Therefore, order of CIT (A) does not require inference.
- ❑ **Principal Commissioner of Income-tax vs. Daljit Singh Sra [2017] 80 taxmann.com 271 (Punjab & Haryana)** Additional evidences filed under rule 46A was relevant for calculation of real income of assessee, same was to be admitted.
- ❑ **Padam Lal Dua vs. ITO , [2016] 76 taxmann.com 354 (Delhi - Trib.)** Where assessee due to his wife's illness was prevented from producing evidences before Assessing Officer in support of its claim, Commissioner (Appeals) could not refuse to admit such evidences for want of an appropriate application under rule 46A
- ❑ **Income-tax Officer vs. Pardeepa Rani [2016] 73 taxmann.com 392 (Delhi - Trib.)** Additional evidence shall be taken into account by Commissioner (Appeals) only if it has been confronted to Assessing Officer and a reasonable opportunity to rebut same has been provided to him.

❑ **Cheil India (P) Ltd. vs. ITO, [2016] 68 taxmann.com 410 (Delhi – Trib)**

It was held that where assessment order passed pursuant to order of Tribunal was related to addition on account of short receipt, Commissioner (Appeals) had no jurisdiction to direct Assessing Officer to make disallowance under Section 40(a)(ia).

❑ **Rallis India Ltd. vs. CIT(A), [2015] 56 taxmann.com 282 (Bombay)**

It was held that where Assessing Officer fails to make enquiry under Section 55A while passing assessment order, Commissioner (Appeals) during appellate proceedings before him can make such an enquiry either himself or direct Assessing Officer to do so.

❑ **Shivangi Steel (P.) Ltd. vs. ACIT [2014] 42 taxmann.com 393 (Agra - Trib.)**

Where assessee failed to produce any document in respect of grounds of appeal or written/ oral submissions even after granting of large number of adjournments by CIT(A), the CIT(A) was justified in proceeding ex parte against assessee

Other Issues....

Contd.....

- ❑ Deputy Commissioner of Income-tax, vs. AOL Online India (P.) Ltd.[2017] 80 taxmann.com 296 (Bangalore - Trib.) Commissioner (Appeals) should not have restored matter to file of Assessing Officer with certain directions and he should have decided issue himself
- ❑ Ballarpur Industries Ltd.vs. Income-tax Officer, [2017] 80 taxmann.com 79 (Delhi - Trib.) Held that the Commissioner (Appeals) should first decide jurisdictional issue and only thereafter should proceed to decide issue on merits if so warranted in law.
- ❑ Ravjibhai K. Sutaria HUF vs. Principal Commissioner of Income-tax , [2017] 86 taxmann.com 127 (GUJARAT) Where assessee's appeal was rejected by Commissioner (Appeals) on ground of non-appearance of assessee while in fact, notices though issued were not served on assessee, order of Commissioner (Appeals) was to be set aside and matter to be placed back before him and resultantly, Designated Authority should proceed with issue.

Other Issues...

Contd.....

- ❑ **Megatrends Inc vs. Commissioner of Income-tax [2016] 74 taxmann.com 197 (Madras)** Where AO had erred in concluding status of assessee as a firm, Commissioner (Appeals) had jurisdiction to go into issue and he could decide status of assessee again in appeal as appeal is continuation of original proceedings
- ❑ **JRK Auto Parts (P.) Ltd. vs. ACIT , [2017] 82 taxmann.com 409 (Delhi - Trib.)** Penalty cannot be levied on an addition which has not been made in assessment or in quantum proceedings by any appellate authority and hence if no such addition has been made in assessment, then same cannot be roped in penalty proceedings either by Assessing Officer or by Commissioner (Appeals) in terms of power enshrined under section 251

Guidelines for Stay of Demand at First Appeal Stage

Office Memorandum [F.No.404/72/93-ITCC], dt 31-7-2017 & Office Memorandum [F.NO.404/72/93-ITCC], dt 29-2-2016 [partial modification of Instruction no.1914, dt 21-3-1996]

- ❑ Where the outstanding demand is disputed before CIT(A), the AO shall grant stay of demand till disposal of first appeal on **payment of 20% of the disputed demand**, unless the case falls in the specified category.
- ❑ **Specified Categories:**
 1. Where the AO is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount **higher than 20% is warranted** (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of SC or jurisdictional HC is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

Guidelines for Stay of Demand at First Appeal Stage....

contd...

2. Where the AO is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount **lower than 20% is warranted** (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of SC or jurisdictional HC is in favour of the assessee, etc.), the AO shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

- ❑ In a case where stay of demand is granted by the AO on payment of 20% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/CIT for a review of the decision of the AO.
- ❑ The AO shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference/ review petition has been made to Pr. CIT/CIT, the same shall also be disposed of by the Pr. CIT/CIT within 2 weeks of the AO making such reference/ review.

Guidelines for Stay of Demand at First Appeal Stage....

contd...

- ❑ In granting stay, the AO may impose such conditions as he may think fit. He may, inter alia,-
 - I. require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;
 - II. reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;
 - III. reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

Issues on Stay of Demand

- ❑ **PCIT vs L.G. Electronics India Pvt. Ltd. (Civil Appeal No.6850 of 2018)[SC]** where it is clarified that irrespective of the OMs from CBDT, the tax authorities, depending on facts of individual cases, can grant deposit orders for an amount less than 20% of the tax demand.
- ❑ **M/s Valvoline Cumins Limited vs. DCIT (2008) 217 CTR (Delhi) 292** income determined on assessment was substantially higher than the returned income, say, twice the later amount or more the collection of the tax in dispute should be held in abeyance till the decision of the appeal.
- ❑ **M/s Taneja Developers and Infrastructure Ltd. vs. ACIT, [2009] 222 CTR 521 (Delhi)** stay of demand should be granted to the assessee till the disposal of appeal by the appellate authorities.
- ❑ **UTI Mutual Fund v. ITO [(2012) 345 ITR 71]** In exercising the powers of stay, the income tax officer should not act as a mere tax gatherer but as a quasi-judicial authority vested with the public duty of protecting the interest of revenue while at the same time balancing the need to mitigate the hardship to the assessee.

Issues on Stay of Demand

- ❑ **Uttar Gujarat Vij Co. Ltd. vs ACIT [2013] 34 taxmann.com 242 (Gujarat)** Appellate Commissioner has power to grant stay pending appeal.
- ❑ **Sooriya Hospital vs. CIT(A), [2015] 54 taxmann.com 192 (Madras)** It was held that where 25 per cent of demand was already with revenue in form of an amount due by way of refund to assessee, condition of deposit of 50 per cent of demand imposed by AAC for grant of stay of assessment order pending disposal of appeal was not justified.
- ❑ **Devaraj Pande vs. Income Tax Authority [2013] 39 taxmann.com 1 (Karnataka)** Held that the CIT has no jurisdiction to pass an order on the application for stay of the order impugned in the appeal pending before the CIT(A). The CIT was required to forward the application for stay to the CIT(A) for decision making.
- ❑ **Ladhabhai Damjibhai Panara vs. Principal Commissioner of Income-tax[2017] 86 taxmann.com 48 (Gujarat)** Where Assessing Officer as well as Principal Commissioner did not disclose reasons which persuaded them to approve collection of 50 per cent of tax demand during pendency of appellate proceedings, order passed by them being in violation of principles of natural justice, could not be upheld.

Preparation of Ground of appeal

- ❑ It is most important part of the appeal
- ❑ Ground of appeal represents those issues which show the nature of the dispute between the assessee and the revenue. A ground of appeal is in fact the nature of the claim, thus it is distinguished from arguments because arguments are made in support of claim. There may be several arguments in support of a claim but all the arguments cannot form ground of appeal.

Drafting of Grounds of appeal

- ❑ Ground of appeal should be simple, clear, precise, concise and without any ambiguity,
- ❑ In case of more than one issue involved in appeal, draft separate grounds for every issue and preference of grounds should be decided accordingly,
- ❑ Nature of dispute and relief expected should be highlighted,
- ❑ Expected relief should be clearly mentioned,
- ❑ Avoid using long sentences,
- ❑ Avoid referring case laws while drafting grounds, if any,
- ❑ In case opportunity of being heard is not granted to the assessee, the same should be clearly mentioned in grounds.

E-filing of Appeal before CIT(A) in Form No. 35

Electronic Filing Is Applicable To Whom:

- ❑ Person who is required to furnish return of income electronically
 - 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 case not covered above
- ❑ In case where assessee has an option to furnish the return of income in paper form, such assesseees have an option to voluntarily file the appeal electronically or in the paper form.

Note: The Form of Appeal shall be verified by the person who is authorized to verify the return of income u/s 140, as applicable to the assessee.

Instruction to e-file Form 35....

- ❑ The grounds of appeal and statement of facts are to be filled in the relevant columns in Form no. 35 itself. The statement of facts should not exceed 1000 words. Each ground of appeal should not be of more than 100 words. If the space provided herein is insufficient, separate enclosures may be used.
- ❑ Scanned copies of order appealed against, Notice of demand and challan for appeal fees are to be attached. These attachments should be in PDF / ZIP format. All the attachments in total should not exceed 50 MB in size.
- ❑ The memorandum of appeal shall be accompanied by a fee and for payment of Appeal Fees, tick the block “MINOR HEAD: SELF ASSESSMENT TAX (300)” in the row “OTHER” in the Challan No. ITNS 280.

For compilation of case laws/ circulars/ notifications/ instructions

The following portals may be referred:

- Income Tax Reports
- Taxmann
- Tax India online
- Current Tax Reporter
- Direct Tax Reporter
- Income Tax India
- ITAT online

Avoid to file repetitive appeals.....

Assessee may make declaration u/s 158A of the Act, in Form no. 8 , to the effect that the question of law arising in his case is identical with the question of law arising in his case for an other assessment year which is pending before the High Court or Supreme Court.

Condition precedent for filing the Appeal

- ❑ Right to file appeal is available to assessee only when aggrieved.




- ❑ No appeal lies in the following cases:
 - I. Where assessment is made on agreed basis.
 - II. No objection is raised by the assessee for the rectification of the Assessment order.
 - III. Rectification u/s 154 is on the consent of the assessee.
 - IV. Matter having become final at the time of original assessment.

- ❑ Assessee has to pay tax:
 - I. If return of income filed – the amount of tax due on returned income
 - II. If no return of income has been filed – pay an amount equal to the amount of advance tax which may be payable by him.

Procedure of e-filing of Form 35

Step I: Login

Login

User ID *	<input type="text"/>
Password *	<input type="password"/>
Captcha Code	  
Enter Captcha *	<input type="text"/>
<input type="button" value="Login"/> Forgot Password?	
New Users? Register	
e-Filing Login Through NetBanking	

Trouble Logging In?


- User ID is not case sensitive.
- Password is case sensitive.
- Make sure that the details entered are correct.

Step 2 : Select option – Prepare & Submit online Form(Other than ITR)

Contd.....

The screenshot shows the e-Filing portal interface. At the top left is the Income Tax Department logo and the text "e-Filing Anywhere Anytime". At the top right are links for Feedback, Accessibility Options, Contact Us, and Help, along with a user welcome message for APOORVA BHARDWAJ (Individual) and a Logout button. Below this is a navigation bar with options: Dashboard, My Account, e-File, e-Proceeding, e-Nivaran, Compliance, Worklist, and Profile Settings. A dropdown menu is open under "e-File", listing several options: Income Tax Return, Response to Notice u/s 133(3), Prepare and Submit Online Form(Other than ITR) (highlighted with a green box and an arrow), Upload Form BB (Return of Net Wealth), Response to Outstanding Tax Demand, Rectification, and Upload Form 1 Equalisation Levy. To the right of the dropdown, a separate green box contains the text "Prepare and Submit Form No.35" with an arrow pointing to the highlighted option. Below the navigation bar, there are sections for "Filing of Income Tax Return" and "View Returns / Forms". A red "T !!!" warning icon is visible. At the bottom, there is a message about "Service Request" functionality and a list of request types: Intimation u/s 143(1)/154/16(1)/35, Refund Re-issue, Change ITR form Particulars, Certificate of Appreciation, and Condonation Request.

Step 3 : Select Form 35

 **e-Filing** *Anywhere Anytime*
Income Tax Department, Government of India

Feedback Accessibility Options Contact Us Help

Welcome APOORVA BHARDWAJ (Individual) Logout
Last Login:: 04/11/2017 17:05:21
Idle Session Timer 1 2 3 4 5 6

Dashboard My Account ▾ e-File ▾ e-Proceeding ▾ e-Nivaran ▾ Compliance ▾ Worklist ▾ Profile Settings ▾

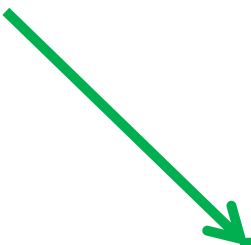
Prepare and Submit Online Form(Other than ITR)

PAN *

Form Name *

- Select
- FORM NO.1 - Statement of Specified Services [Equalisation levy Rules, 2016]
- FORM NO.3CEK - Annual Statement under section 9A
- FORM NO.3CFA - Opting for taxation of income by way of royalty in respect of Patent
- FORM NO.3 - Appeal to the Commissioner of Income-tax (Appeals) [Equalisation levy Rules, 2016]
- FORM NO.8 - Declaration u/s 158A(1) [Identical question of Law]
- FORM NO.9 - Application u/s 10(23AAA)
- FORM NO.9A - Application u/s 11(1) - Expl (2) [Property held for Charitable/Religious purposes]
- FORM NO.10 - Statement u/s 11(2)
- FORM NO.10A - Application u/s 12A(1)(aa) for registration of trust
- FORM NO.10BA - Declaration u/s 80GG [House Rent]
- FORM NO.10CCD - Certificate u/s 80QQB(3) [Royalty Income]
- FORM NO.10CCE - Certificate u/s 80RRB(2) [Royalty Income]
- FORM NO.10E - Form for relief u/s 89
- FORM NO.10G - Application u/s 80G(5)(vi) [Charitable Fund/Institution]
- FORM NO.10H - Certificate of foreign inward remittance [Royalty/Copyright]
- FORM NO.15CA - Information for payment to Non-Resident
- FORM NO.35 - Appeal to Commissioner (Appeals)
- FORM NO.40C - Application for recognition of a Provident Fund
- FORM NO.11 - Accounts of subscribers to a Recognized Provident Fund

Select Form 35



Step 4 : Select Jurisdictional CIT(A) as per Notice of Demand u/s 156 of the Act.

Contd.....

Dashboard My Account ▾ e-File ▾ e-Proceeding ▾ e-Nivaran ▾ Compliance ▾ Worklist ▾ Profile Settings ▾

Prepare and Submit Online Form(Other than ITR)

PAN *

Form Name *

Select CIT(A)

Please select the relevant CIT(A) from the drop down.

Please check the checkbox if CIT(A) you wish to appeal is not present in drop down

Please select the State*

Please select the City*

Please select the relevant CITA*

Select CIT(A) as per Demand Notice

60

Step 5 : Instruction to be followed while filing

Form 35

Contd.....

Instructions Form 35 Verification

Instructions

General Instructions:

1. Fields marked with asterisk (*) are mandatory.
2. While entering the data in online form, please do not click BACK button in browser or press BACKSPACE button. You will be logged out.
3. All amounts are in Indian Rupees.
4. A calendar is provided for selecting the date field (format DD/MM/YYYY).
5. All greyed out fields are either auto-filled or non-editable.
6. 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.
7. Please enter only the value wherever the information is needed in percentile.
8. It is preferable to have JRE version 1.7 and above installed on your machine.
9. Please verify the details of the Form by clicking on "Preview and Submit" and upload attachments/Documents before you submit.

Step 6 : Form 35 – Personal Information Contd.....

Instructions Form 35 Verification

Personal Information

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

TAN No. is to be given (if available).



Email Address & Mobile No. are mandatory

Option to select whether notices / communication may be send to appellat on e mail.

Step 7 : Form 35 – Details of Order against which Appeal is filed

Contd.....

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

Block Period From (AY)

To (AY)


Date of Search



Details of Order appealed against/Application u/s 248

a Section and sub-section of the Income-tax Act,1961*

2

Order Number

b Date of Order/Date of Tax Payment in case of Application u/s 248


c Date of service of Order / Notice of Demand


3 Income-tax Authority passing the order appealed against *

WARD 37(3), DELHI

Step 8 : Form 35 – Details of Appeal

Contd.....

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) *

Select ▼

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 ?*

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

7 If appeal relates to penalty ?*

Select ▼

a Amount of penalty as per order (□)

b Amount of penalty disputed in Appeal (□)

Step 9 : Form 35 – Details of Tax Paid

Contd.....

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 *	Select ▼
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*	Select ▼
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)	

- where return has been filed, details of date of filing of return and acknowledgement no. are also to be given.
- Where no return has been filed, details of BSR Code and Sr. No. are to be given additionally in respect of tax paid equivalent to advance tax amount.
- Where appeal relates to tax deductible U/s. 195 borne by deductor, now the BSR Code, Amount, Sr. No. etc. are to be additionally given in respect of tax deposited U/s. 195(1)

Step 10 : Form 35 – Statement of facts, GOA & Additional Evidence

Contd...

Statement of facts, Grounds of Appeal and additional evidence

Statement of Facts

11 Facts of the case in brief (not exceeding 1000 words) *

List of documentary evidence relied upon

List of documentary evidences relied upon is to be given

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 *

Select

2.1 If reply to 12 is Yes, furnish the list of such documentary evidence

List of additional documentary evidences as per Rule 46A, if any, is to be given

13 Grounds of Appeal(each ground not exceeding 100 words)*

Sl. No.

Relevant section (s) of IT/Act

Issue

Ground of Appeal

1



Add



Delete

Step II : Form 35 – Appeal Filing Details

Appeal filing details

14 Whether there is delay in filing appeal*

Delay in filing of appeal, if any, is to be specifically mentioned

15 If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)

In case of delay, the grounds for condonation of delay are to be mentioned.

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"/>

+ Add 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" value="A-2/404, PRINTER APARTMENT"/>		<input type="text"/>		<input type="text"/>
Area/ Locality *	Town/ City/ District *	State *	Country *	
<input type="text"/>	<input type="text"/>	<input type="text" value="DELHI"/>	<input type="text" value="INDIA"/>	
Pincode *	Mobile No *	Email Address *		
<input type="text"/>	<input type="text"/>	<input type="text"/>		

Instructions

Form 35

Verification

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*

Date:*

Step 13 : Form 35 – Attachments

Contd.....

- 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	<input type="button" value="Choose File"/>	No file chosen
2	Notice of demand	<input type="button" value="Choose File"/>	No file chosen
3	Any other attachment	<input type="button" value="Choose File"/>	No file chosen

Attachment should be in Format of PDF or XIP

Maximum size of each file should not exceed 5MB

THANK YOU...!!

Presented by: CA. Sanjay Kumar Agarwal
Email id: agarwal.s.ca@gmail.com