



CIT (Appeals) – Practice, Procedure & Law

Presentation By :-

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Topics to be Deliberated

- Appeal – Meaning
- Nature of Tax Appeals
- Relevant Provisions
- Appealable Orders
- Appeal by person denying liability to deduct tax
- Form of Appeal and Limitations
- Drafting of Grounds of Appeal
- Procedures in Appeal
- Additional Evidence
- Additional Grounds of Appeal
- Powers of CIT(A)

Appeal – Meaning

■ Webster's Dictionary

The removal of a cause or suit from an inferior to a superior judge or court for a rehearing or review on account of alleged injustice or illegality in the trial below.

■ Wharton's Law Lexicon

The judicial examination of the decision by an higher court of the decision of an inferior Court.



Nature of Tax Appeals

- Civil Appeal V/s Tax Appeal
- Inherent Right V/s Statutory Right
- Substantive Right V/s Procedural Right
- Law Governing Right to Appeal

Relevant Provisions

Chapter XX-(A) (Sections 246A to 251 except s.247)

- Section 246A – Appealable Orders
- Section 248 – Appeal by person denying liability to deduct tax
- Section 249 – Form of Appeal and Limitation
- Section 250 – Procedure in Appeal
- Section 251 – Powers of the CIT (A)

Appealable Orders (Sec 246A)

NATURE OF ORDERS	SECTIONS
Tonnage Tax	115VP
Intimation – only if the assessee objects to making of adjustment	143(1)
Assessment Orders	143(3) or 144
Fringe Benefit Tax	115WE (3) / 115WF/ 115WG
Reassessment	147/ 150 / 153A
Rectification	154/155
Other Orders	163/ 170 (2) / 170 (3)/ 171/185/237
TDS / TCS	201/ 206C
Penalty Orders	221/ 271/ 271A/ 271AAA/ 271F/ 271FB/ 272AA/ 272BB/ 275(1A)/ 158BFA/ 271B/ 271BB/ 271C/ 271CA/ 271D/ 271E/ 272A/ 272AA

Appealable Orders Contd....

- Assessee to Appeal (Dept cannot appeal against AO).
- Exhaustive List and not inclusive
- Meaning of Expression Aggrieved
- Not 'Shall' but May
- No Right to Appeal before CIT(A) against Offences and Prosecutions.

Appealable Orders Contd....

- Denial of Liability to be assessed? Whole/Partial
- Order passed u/s 143(3) or 144,
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;

Appealable Orders Contd....

- Appeal against the appeal effect order?
Yes, 165 ITR 0403 (AP),] 171 ITR 0344 (AP), 282 ITR 0595 (Guj)
- Appeal against the order charging interest u/s 234A, 234B etc?
252 ITR 001 (SC),
Appealable only if disputes liability to pay Advance tax i.e. to the very levy of the same.
- Appeal against order assessing income wrongly offered?
Yes, See 32 STC 599 (Mys)].
Also CBDT Circular No. 14 (XL-35), dated 11th April, 1955

Appealable Orders Contd....

- Appeal against the issue decided by revisional or appellate authority in their order?
No, 221 ITR 0194 (Bom.)

- Appeal against the protective assessment?
Yes, See CIT v. S.G. Modi [1983] 140 ITR 517(Guj.)
Instruction : No. 1842, dated 28-3-1990

- Remedy against orders not appealable before CIT(A)?
Appealable before ITAT u/s 253 OR
Constitutional Remedy Under Article 226, 227

Appeal by person denying liability to deduct tax-Section 248

- Applicable in case of Payment (other than interest) to Non Resident or Foreign Company u/s 195.
- TDS, if any, on such payment is to be borne by the Payer.
- Such tax has been paid
- Deductor claims that no tax was required to be deducted
- Deductor denying liability may appeal for a declaration that no tax was deductible.

Section 248

Contd....

Appealability of Certain order u/s 248

- Order u/s 195[2]
- CA Certificate
- Order u/s 197[3]

Whether Deductor can claim refund of Tax?

Part payment of Tax Demanded-whether appealable?

Form of Appeal and Limitations

Section 249

FORM OF APPEAL	Form no. 35 (see Rule 45)
VERIFICATION	Same as per Sec 140
FEES	<p>Assessed income upto 1Lakhs = Rs. 250/-</p> <p>Assessed income >1Lakhs LT 2Lakhs = Rs. 500/-</p> <p>Assessed income >2 Lakhs = Rs.1000/-</p> <p>Subject matter of Appeal different = Rs. 250/-</p>
TIME LIMIT TO FILE AN APPEAL	Within 30 days of service of notice of Demand or payment of tax or intimation of order appeal against.
CONDONATION OF DELAY	Deliberated Separately
PAYMENT OF ADMITTED TAX	Deliberated Separately

Section 249 (Form of Appeal)

- Memorandum of Appeal, Statement of Facts and Grounds of Appeal in Duplicate.
- To be addressed to Jurisdictional CIT(A).
(Always stated on demand notice u/s 156)
- 17 clauses (based on which ITNS 51 is send to AO for verification).
- Scanned copy of the Order appealed against as well as Notice of Demand. (*Either in PDF or in ZIP format*) to be filed online.

Section 249 (Verification)

- Verification by person competent to sign Income Tax Return u/s 140 (Digital signatures to be affixed)
- Improper verification is a defect curable.
Also shelter of 292B available
- Unverified and unsigned Form? (now impermissible incase of online appeals)
- In case of Non Residents, etc, attach power of attorney.

Section 249 (Fees)

- Payment of Appellate Fees is mandatory.
- To be paid either online or through ITNS 280
- Details of Challan to be referred at point no. 16 of form 35.
- Departmental Circular no.50 (XL-43) of 1956, dated 28/12/56, the memorandum of appeal in form 35 is to be affixed with a Court Fee Stamp of 50 paise. **(post e-filing, redundant)**
- Attaching Power of Attorney & payment of Court Fees?

Section 249 (Time Limit to File an Appeal)

- Within 30 days of
Service of Notice of Demand, OR
Payment of Tax, OR
Intimation of order sought to be appealed.
- Day on which order served to be excluded in computing limitation (Sec 268).
- Presentation of appeal in Person or by Agent or by Registered post (Take tear off acknowledgement)
- If send via post, date of filing is date of receipt in office of CIT(A).
- In case of online form 35, preferable to download acknowledgement of **Form 35 submitted.**

Section 249 (Condonation of Delay)

- The CIT(A) may admit an appeal
- After Expiration of the Time Limit, if,
- He is Satisfied
- That Appellant had Sufficient Cause.

Section 249 (Condonation of Delay contd....)

- Petition to be attached with Appeal (to be referred at point no. 14 and 15 of Form 35 and advisable to attach condonation petition as '*any other attachment*'
- Where ever possible, support the delay with evidence or material or affidavit.
- Satisfaction of the CIT(A) is subjective satisfaction subject to facts and circumstances of each case. No common matrix.
- “Sufficient Cause” is to be construed liberally.
253 ITR 798(SC), 167 ITR 471 (SC).
- Order of CIT(A) condoning Delay is appealable before ITAT. 258 ITR [AT] 0066 (ASR.)(TM.) Even order refusing condonation of delay is appealable before ITAT

Section 249(4) Payment of Admitted Tax

- No appeal under this chapter Shall be Admitted, unless,
- At the time of filing of Appeal,
 - a) If ROI filed = Tax on Returned Income
 - b) If ROI not filed = Advance tax Payable
- Has been paid by the appellant.
- CIT(A) for good and sufficient cause and upon recording reasons in writing exempt appellant from operation of cl.(b) supra

Section 249(4) Payment of Admitted Tax Contd....

- 'Tax' does not include interest
CIT v/s Manoj Kumar Beriwal 316 ITR 218 (BOM)
- Tax includes only 'Admitted / Undisputed" Tax
249(4) n.a. when liability to pay tax was disputed 231 ITR 892 (Kar.)
- Dismissal order by CIT(A) in limine appealable before ITAT
Favorable 167 ITR 173(Orissa), 171 ITR 646 [MP]
Against 308 ITR 346 (Ker.)
- Adjustment of Seized cash, Refunds, etc. due to appellant
Delhi HC in Nokia 292 ITR 022
- Chapter referred in 249(4) refers to Ch.XX-A only. Pawan Kumar Ladha (C.A. no. 8914 to 8922 of 2003, decided by SC on 06-04-2010)

Drafting of Grounds of Appeals

Grounds of Appeals

To be *Simple, Specific and Short. (3S)*

First Ground to be General, Challenge Aggregate Additions

Example

“That on the Facts and in the Circumstances of the Case and in Law, the AO has erred in assessing the income of the appellant at Rs. _____, instead of Rs. _____ returned. As such Aggregate additions of Rs. _____ may please be deleted”

Grounds of Appeals Contd....

Specific Grounds

“ That on the Facts and in the Circumstances of the Case and in Law, the AO has erred in making an addition of Rs._____ u/s 68 of the Act. As such the addition of Rs._____ may please be deleted”

“That the assessing officer erred on facts and in law in disallowing Rs._____ out of Bad Debts of Rs._____ claimed under section ____ of the I.T. Act”

Grounds of Appeals Contd....

Legal Grounds

“That on the facts and in the circumstances of the case and in Law, the AO has erred in framing the assessment u/s 147 of the Act, without following the mandatory procedure prescribed u/s 147 to 151 of the Act. As such, the assessment may please be held as bad in law and additions made thereon may kindly be deleted.”

Always take a Residuary Ground

The Appellant craves to add, alter, delete, modify or withdraw any of the above grounds of appeal.

Procedures in Appeal Sec. 250

SUB-SEC. OF SEC. 250	DISCRETIONARY / MANDATORY	PARTICULARS
[1]	Shall	Day, and place of Hearing of appeal-Notice.
[2]	Shall	Authorized Representatives
[3]	Shall	Adjournments
[4]	May	Further Inquiry, Suo motto or issue directions.
[5]	May	Additional Grounds of Appeal
[6]	Shall	Order to be in writing
[6A]	May	Order to be passed, where possible, within one year from the end of the Financial year in which appeal has been filed.
[7]	Shall	Communication of the order

Additional Evidence Sec 250(4)

R.46A

- Discretionary Power of CIT(A)
- Appellant shall not be entitled to produce before the CIT(A) any evidence oral or documentary other than that produced by him before the assessing officer.
- Exceptions provided in Rule 46A(1)
- SC in Keshava Mills Co Ltd v/s CIT 56 ITR 365[SC]

Circumstances in which Additional Evidence may be permitted by CIT(A)

- a) Where the AO has refused to admit evidence which ought to have been admitted ; or

- b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO; or

- c) Where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal ; or

- d) 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.

Additional Evidence Sec 250(4)

R.46A

Contd....

- Application for admitting Additional Evidence.
- Opportunity to AO – is it mandatory?
- Remand Report ,Rejoinder Submissions
- Power of CIT(A) under rule 46A(4).
- Refusal to admit additional evidences after calling remand report on merits.

Additional Grounds of Appeal

Sec. 250(5)

- CIT(A) may permit additional grounds to be raised.
- Upon Satisfaction that omission was not willful or unreasonable.
- Admission or Rejection to be discussed in Appellate Order.
- Time Limit to Raise Additional Grounds of Appeal?
- Scope and Power to admit additional ground (SC in Jute Corporation of India 187 ITR 688).

Powers of CIT(A) Sec. 251

- Power Co-terminus with that of AO.
53 ITR 225 (SC) – Kanpur Coal Syndicate
- Power to deal with subject matter of Assessment.
66 ITR 443 (SC) – Rai Bahadur H.M. Chamaria
- Power of Enhancement [Natural Justice – 251(2)]
- Power to discover new sources of income
224 ITR 610 – Nirbhaya Ram Dalu Ram (CIT(A) can do what AO could do and also direct the AO to do what AO has failed to do.)
- Power to grant stay of Demand.

Miscellaneous:-

- Do's & Don'ts before filing Appeal.
- Role of CIT(A) post Goetze's Law.
- Single Appeal against Multiple orders
- Consolidated orders agst Multiple appeals
- Withdrawal of Appeal
- Alternative Plea/Grounds



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