



# Practical aspects of Preparation of Appeal

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.*

## “Meaning of Appeal”.....

- 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**

**\*\*Note:** Appellant can also file appeal before the National Tax Tribunal (NTT) under the National Tax Tribunal Act, 2005 which is yet to be notified.



# Overview of Appeals before CIT(A)/ITAT

## Relevant Rules to Appeals.....

Rules of Income Tax Rules, 1961	Brief	Remarks
Rule 45	Form of Appeal to Commissioner(Appeals)	** <u>Form 35</u>
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>
Rule 47	Form of Appeal and Memorandum of cross objection to Appellate Tribunal	** <u>Form 36</u>

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

## 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.*

## Important points to be considered.....

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

## Important points to be considered.....

- Note that where if any claim had remained to be raised, fresh plea can be raised.
- Widest possible grounds should be taken in appeal.
- Alternative plea should be checked for being without prejudice the ground.
- 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.
- Ensure as to who is the respondent.
- File application for stay as and where required.
- Reply to show cause notice should be made promptly.
- 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

## 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

## Preparation of Ground of appeal

### It is most important part of the appeal

- Ground of appeal represent the those issues which show the nature of the dispute between the assessee and the revenue. A ground of appeal is in fact nature of a 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 and all the arguments cannot form ground of appeal.

## Drafting of Grounds of appeal

- Points should be kept in mind while drafting
- Ground of appeal should be simple, clear, precise, concise and without any ambiguity
- In case of more than one issue involved in appeal, draft one separate ground for one issue
- Nature of dispute and relief expected should be highlighted
- Expected relief should be clearly mentioned
- In case more than one issue involved in appeal, preference of grounds should be decided.
- 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

## Effective representation before the Appellate Authorities

- To effectively communicate and represent the case of the assessee, should deeply study the facts of the case and provisions of statute before appearing.
- There should be proper index/ covering with brief discussion of documents/ details filed.
- File the documents in the form of '**Paper Book**' according to prescribed format (however no such format is prescribed for the appeals filed before CIT(A)).
- Compile all the case law relied and also quote the relevant Para(s) in the submissions/ Synopsis.
- Rule of precedence are to be strictly followed.
- Dress code for appearing before appellate authority should be strictly followed.
- Body language should be controlled.
- Should carefully listen appellate authority and wait for his turn.


# Monetary Limit of filing of Appeal by the department....

Instruction No. 3 dated 09/02/2011

Rule	Limit (in Rs.)
Appeal before the Tribunal	3,00,000/-
Appeal before the High Court	10,00,000/-
Appeal before the Supreme Court	25,00,000/-

Note: Appeal should be decided on merit bases and not file merely because the tax effect exceeds prescribed monetary limit .





# First Appeal – Commissioner of Income Tax

U/s 246 to 250 of the Act



## Relevant Sections .....

Section	Brief
245A	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)

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

- Against the order of Assessing Officer
- Who can prefer appeal – aggrieved assessee
- Time Limit – Filed appeal 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. Grounds of appeal and the statement of facts are also required to be filed in duplicate.

## Condition precedent for filing the Appeal

- Right to file appeal is available to assessee only where aggrieved.
- No appeal lies in the following cases:
  - Where assessment made on agreed basis.
  - No objection raised by the assessee to rectification of Assessment order.
  - Rectification u/s 154 on consent of the assessee
  - 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.

## Condonation of delay in filing of appeal .....

- 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

## • Fees for filing of Appeal.....

<b>S. No.</b>	<b>Particulars</b>	<b>Amount</b>
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/-

## Authorized person for signature and verifications of appeal Form...

- Grounds of Appeal & Form of verification thereto relating to an assessee shall be signed and verified by the person who is authorized u/s 140 of the Act to sign the return of income u/s 139 of the Act.

## 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.



## 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).
- 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....

- 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.

## 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. We cannot find fault with CIT(Appeals) entertaining such appeal of the assessee.

## Section 249 - Limitation of Appeal

**Period of limitation of filling an appeal in following cases:**

- a) **Appeal by the person denying liability to deduct tax** – with in 30days from the date of payment of taxes
- b) **Appeal against assessment of penalty** – with in the 30 days from the date of service of demand relating to the assessment or penalty.
- c) **Appeal in any other case** – within 30 days from the date on which the intimation of the order sought to be appealed against is served.

## Issues Relating to Section 249

- **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 Relating to Section 249

- **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.

## 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.

## Issues- Section 250

- **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
- **Uttar Gujarat Vij Co. Ltd. vs ACIT [2013] 34 taxmann.com 242 (Gujarat)**  
Appellate Commissioner has power to grant stay pending appeal.

## 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

## Issues- Sec 251....

- **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.

- **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.

## Issues- Sec 251....

- **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

- **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.



# Second Appeal – ITAT

U/s 246 to 250 of the Act

&

Income Tax Appellate Tribunal Rules, 1963



## Relevant Sections .....

Section	Brief
252	Appellate Tribunal
253	Appeals to the Appellate Tribunal
254	Order of the Appellate Tribunal
255	Procedure of Appellate Tribunal



## Outline of Second Appeal before ITAT

- Against the order of the CIT (A)
- Who can prefer – aggrieved assessee or Commissioner of Income-tax
- To be filed within 60 days from the date of receipt of the appealable order. Delay for bona-fide reasons may be condoned.
- Application Form – Form 36 along with the Grounds of appeal and the statement of facts are also required to be filed along with Memorandum of appeal.

## • Fees –

S. No.	Particulars	Amount
1	Assessed total income Rs.1 lakh or less	Rs. 500/-
2	Assessed total income more than Rs.1 lakh but not more than 2 lakh	Rs. 1500/-
3	Appeals involving total assessed income of more than Rs.2 lakhs	Rs. 10,000/- or 1% of income (whichever is lower)
4	Appeals not related to assessed income	Rs. 500/-

## Constitution of ITAT..

- President
- Senior vice-president/ voice –president
- Member-judicial and Accountant
- Registrar
- Deputy Registrar
- Assistant Registrar

## Sec.252-Appellate Tribunal

- Constitution of Tribunal: CG shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as thinks fit to exercise the powers and discharge the functions.
- Eligibility: A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Legal Service and has held a post in Grade II of that services or any equivalent or higher post for at least three years or who has an advocate for at least ten years.

## Sec.252-Appelate Tribunal

- An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of Add. CIT or any equivalent or higher post for at least three years.
- CG shall appoint following persons to be the President thereof
  - a. a person who is a sitting or retired Judge of a HC and who has completed not less than seven years of service as a Judge in a HC; or
  - b. the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal

## Sec.253 – Appealable order

- Any order passed u/s 154, 250, 271, 271A or 272A
- An order passed by an AO u/s 158BC in respect of search initiated u/s 132
- An order passed by CIT u/s 12AA, 80G, u/s 263
- Order passed by AO u/s 143(3), 147, 153A, 153C in pursuance of direction of the DRP or order passed u/s 154 in respect of such order is appealable to the ITAT under the said section.
- Order passed by the AO u/s 143(3)/ 147/ 153A/ 153C r.w.s. 144BA(12), or an order amending such order u/s 154/ 155 [effective from 1-4-2016]

## Cases where appeal to be directly filed before the ITAT

- Order passed by the CIT u/s 263
- Order passed by the CIT u/s 12AA and 80G
- Order passed by the CIT u/s 271
- Order passed by the CIT/ C.CIT/ Dir. General/ Directorate u/s 272A
- Order passed by AO u/s 143(3), 147, 153A, 153C in pursuant to the direction of the DRP or an order amending such order u/s 154
- order passed u/s 154 in respect of such order is appealable to the ITAT under the said section
- CIT u/s 154 Order passed by the CIT u/s 271
- Order passed by the AO u/s 143(3)/ 147/ 153A/ 153C r.w.s. 144BA(12), or an order amending such order u/s 154/ 155 [effective from 1-4-2016]

## Precautions to be taken in preparing paper book...

- Paper book should be prepared in prescribed format and filed in triplicate.
- Only relevant papers which are necessary to be referred to in the course of hearing should be enclosed.
- Assessee paper book may be filed in the case appeal departmental appeal.
- Should be submitted in within the prescribed time.
- Should be properly indexed.
- Avoid preparing bulky paper book.



## Important point to be considered...

- No additional evidence is produced before the ITAT first time without proper application.
- In case of delay in filing paper book with in prescribed time, condonation of delay should be file.
- File cross objection with in prescribed time.
- Cross objection is also filed in case appeal is already filed.

## Sec.254 – orders of ITAT

- The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit
- The Appellate Tribunal may, at any time within four years from the date of the order, amend any order passed by it
- where such appeal is not so disposed of within the four years from the date of the order, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit
- The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal
- The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner

## Section 255- Procedural aspects of Appeal to ITAT

1. The powers & functions ITAT may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.
2. A Bench shall consist of one judicial member and one accountant member, subject to the provisions contained in sub-section (3)
3. The President or any other member of the ITAT authorised in this behalf by the CG may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the AO in the case does not exceed Rs. 5,00,000/-, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of 3 or more members, one of whom shall necessarily be a judicial member and one an accountant member.

## Section 255- Procedural aspects of Appeal to ITAT

4. In case of difference of opinion, the issue to be decided on majority opinion. In case there is no majority, issue to be decided according to the opinion of the majority of the members of the ITAT who have heard the case, including those who first heard it.
5. Subject to the provisions of this Act, the ITAT shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
6. The ITAT shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in sec. 131, and any proceeding before the ITAT shall be deemed to be a judicial proceeding within the meaning of sec. 193 & 228 and for the purpose of sec. 196 of the Indian Penal Code (45 of 1860), and the ITAT shall be deemed to be a civil court for all the purposes of sec. 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).



# Appeal to High Court

U/s 260A and 260B of the Act



## Outline of Appeal before the High Court.....

- Appealable order: If substantial question of law arising out of ITAT order.
- Who can prefer – aggrieved assessee or Chief Commissioner/ Commissioner of Income-tax.
- To be filed within 120 days from the date of receipt of the relevant order. Delay for bona-fide reasons may be condoned by the CIT (Appeals).
- The Memorandum of appeal precisely stating therein the substantial question of law involved should accompany the court fee for filing appeals to High Court.

## Section 260A- Appeal to High Court

- The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

**Provided** that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

## Section 260A- Appeal to High Court

- The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- The High Court may determine any issue which—
  - (a) has not been determined by the Appellate Tribunal; or
  - (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).
- Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.



## Issues relating to section 260A.....

- **CIT vs Noorudin Nazarally Patel [2014] 43 taxmann.com 302 (Gujarat)**

Held that In case of a composite order by High Court or appellate authority, which involves more than one A.Y. and common issues in more than one A.Y.,

appeal shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the years, "if it is decided to file appeal in respect of the years in which 'tax effect' exceeds the monetary limit prescribed.

## Issues relating to section 260A.....

- **Convergys India Services (P.) Ltd. vs CIT [2014] 41 taxmann.com 182 (SC)**

HC should consider whether or not question of law which assessee intended to press for consideration need to be framed at time of hearing of appeal

*Case referred: CIT v. Mastek Ltd. [2013] 32 taxmann.com 380 (SC)*

- **Ajay Pande vs. ACIT [2014] 42 taxmann.com 203 (Allahabad)**

Held that a declaration has to be obtained from counsel/party as to whether any cross appeal is pending or not involving same or similar question in order to avoid delay and contradictory decision.

## Section 260B- Case before High Court to be heard by not less than two Judges.

- The appeal shall be heard by a bench of not less than two Judges of the HC and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
- In case of no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the HC and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.



# Appeal to Supreme Court

U/s 261 and 262 of the Act



## Outline of Appeal before the Hon'ble Supreme Court

- Against Judgment of High Court/ National Tax Tribunal (NTT).
- Who can prefer – aggrieved assessee or Commissioner of Income-tax.
- The application before the High Court for certificate of fitness should be filed within 60 days.

## Section 261: Appeal to Supreme Court

An appeal shall lie to the Supreme Court from any judgement of the High Court delivered on a reference made under section 256 against an order made u/s 254 before the 1-10-1998, or an appeal made to High Court in respect of an order passed by ITAT u/s 254 on or after that date in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

## Section 261: Appeal to Supreme Court

### **Appeal against order or decision of NTT also before lies before Supreme Court**

Section 24 of the NTT Act, 2005 provides that any person including any department of the government aggrieved by any decision or order of the National Tax Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the National Tax Tribunal to him:

The proviso to section 24 of the NTT act, 2005 further provides that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within such time as it may deem fit.

**It is however to be noted that appeal before NTT shall lie with effect from the date which is yet to be notified.**

## Issues relating to sec. 261

- **Prestige Estates Projects (P.) Ltd. vs DCIT [2013] 40 taxmann.com 325 (Karnataka)**

Where SLP is pending against assessee for another A.Y. having same substantial question of law, AO should pass consequential order only after final disposal of SLP by Supreme Court.

- **CIT vs. Jhabua Power Ltd [2013] 37 taxmann.com 162 (SC)**

Questions of law being raised first time before Supreme Court, should be decided by Tribunal first.



## Section 262: Hearing Before Supreme Court

- The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals u/s 261 as they apply in the case of appeals from decrees of a High Court.

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

- The costs of the appeal shall be in the discretion of the Supreme Court
- Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.



Thank You...!!

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