



# **APPEAL BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS)**

# Filing of appeal before CIT(A)

U/s  
246A

Against the order  
passed by the  
Assessing Officer  
(AO) u/s 143(1),  
143(3), 147, 154,  
201, 271 etc.

U/s  
248

Against the order  
passed by the  
Assessing Officer  
(AO) u/s 195

# Appealable orders before CIT(A) [Section 246A]

Order passed u/s	Note
143(1) or (1B), 200A(1) or 206CB(1)	An intimation, where assessee objects to the making of adjustments in return of income or statement of TDS or TCS
143(3)	Scrutiny assessment
144	Best judgment assessment
147	Income escaping assessment
153A, 153C	Assessment or reassessment in search cases
92CD(3)	Order passed on modified return filed in accordance with and limited to the advance pricing agreement

Order passed u/s	Note
154, 155	Relating to rectification
237	Relating to refunds
270 to 275	Penalty orders under Chapter XXI
201	Treating the assessee deemed to be assessee in default for failure to deduct the whole or any part of the tax or pay tax after deduction
206C(6A)	Treating the assessee deemed to be assessee in default for failure to collect the whole or any part of the tax or after collecting, fails to pay the tax.
170(2) or (3)	Relating to assessment on successor

## **Non - appealable orders (Orders Not specified u/s 246A)**

- ✦ **Order passed by AO u/s 197(1) [No deduction of TDS or deduction at lower rates]**
- ✦ **Interest charged u/s. 220(2)**
- ✦ **Order of Refusal to grant stay of demand.**
- ✦ **No objection by the assessee to the rectification of assessment order**
- ✦ **Rectification u/s. 154 made on assessee's consent**
- ✦ **Orders with agreed additions**
- ✦ **Assessment made on an agreed basis**

# Reconciliation of Returned income with assessed income

<b>Income as per return</b>		<b>20,50,000</b>	<b>Action suggested</b>
<b>Add</b>			
1 Addition u/s 68	10,00,000		Appeal
2 Disallowance of commission	2,00,000	12,00,000	Appeal
<b>TOTAL</b>		<b>32,50,000</b>	
<b>Add</b>			
1 Deduction claimed u/s 80C, not discussed, not allowed	1,00,000		Rectification u/s 154
2 Totalling error	20,000	1,20,000	Rectification u/s 154
<b>Assessed income</b>		<b>33,70,000</b>	

# Time limit for filing appeal [Section 249(2)]

The appeal should be filed within a period of 30 days of—

the date of **service of notice** of demand relating to assessment or penalty

the date of **payment of tax**, where appeal is under section 248

the date on which intimation or the order sought to be appealed against **is served**, if it relates to any other cases.

# Exclusion of time for calculating time limit for filing appeal [Section 268]

The date on which the order complained of is served is to be excluded [**date of service of the order**]

When only the notice of demand is served without a copy of the order, the period of 30 days would be counted from **the day assessee receives a copy of the order**

Where an application has been made under section 270AA(1) [*immunity from imposition of penalty*], 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

Where an assessee was served a notice of demand which did not include interest and subsequently another notice of demand was served including the interest, the period of limitation would begin from the date **of service of second notice of demand.**



# Condonation of delay in filing appeal [Section 249(3)]

↓ Where the appellant has sufficient cause for not filing the appeal by the due date, CIT(A) may condone the delay.

↓ It is advisable that the appeal in such cases is accompanied by an application for condonation of delay narrating the reasons for delay. However, the appellate authority may condone the delay even where there is no such application made by the assessee. [Markland Pvt. Ltd. v State of Gujarat AIR 1989 Guj 44; Naran Annappa v Jayanti Lal Chunilal Shah AIR 1987 Guj 205]

↓ If the CIT(A) refuses to admit appeal after the prescribed period, the assessee has a right to file an appeal against such order

# 'Sufficient cause' in condonation of delay

The words '**sufficient cause**' should receive a liberal construction so as to advance substantial justice where no negligence nor inaction nor want of *bona fides* is imputable to the applicant.

## Examples

The quantum of stakes involved and the importance of the issues raised are relevant considerations for delay



Gupta Rice Mills (1993)  
91 STC 208 (All)

A subsequent decision of the Supreme Court or a High Court resulting in change of legal position



CIT v Sothia Mining & Mfg. Corp. (1990) 186 ITR 182 (Cal)

Time taken in pursuing other remedies may be a valid cause



CIT v K.S.P Shanmugavel Nadar & Others (1985)  
153 ITR 596 (Mad)

The pendency of a writ before the High Court, and Special Leave Petition before the Supreme Court, held as sufficient cause



Madura Coats Ltd. v Collector of Central Excise (1994) 119 CTR 63(SC)

Delay due to reason that Director and Chief Executive Officer (DCEO) of assessee who had to take a decision to file an appeal had resigned.



Elnet Technologies Ltd. v DCIT, Chennai (2018) 259 Taxman 593 (Mad)

Where the delay was alleged to be on account of illness but the medical certificate was not filed, in spite of an opportunity having been given, the refusal to condone the delay was justified



Sital Prasad v CIT (1991) 187 ITR 135 (All)]



## Fee for filing appeal [Section 249(1)]

Clause	Criteria	Fees
(a)	Where the total income/loss computed by the A.O is ₹1,00,000 or less	250
(b)	Where the total income/loss computed by the A.O exceeds ₹1,00,000 but does not exceeds ₹2,00,000	500
(c)	Where total income/loss computed by the A.O exceeds ₹2,00,000	1000
(d)	Where the subject matter of appeal relates to any matter other than specified in clauses (a), (b) and (c) above	250



In case of assessed loss – “**Minimum Fees**” (Rs.250)  
[Gibs Computer Ltd. vs. ITAT – 317 ITR 159 (Bom)]

# Tax payable before filing appeal [Section 249(4)]

No appeal shall be admitted unless  
at the time of filing of the appeal:-

Where a return has been  
filed and the assessee has  
paid tax due on the  
returned income.

Where no return has been filed  
the assessee has paid an amount  
equal to the amount of advance  
tax which was payable by him.  
i.e. tax which is payable on  
income assessed u/s 144 or 147.



However, where no return has been filed by the assessee, the CIT(A) on an application made by the assessee, may, for any **good and sufficient reason** to be recorded in writing, exempt him from the payment of such tax.

## Some examples of good and sufficient reason

Losses incurred  
by assessee



Hotel Sai Siddi (P) Ltd vs DCIT  
[2011]13taxmann.com 155 (Pune Trib)

Incorrect advice  
by consultant



Smt. Banu Begum vs DCIT[2012] 22  
taxmann.com 235 (Hyd. Trib)

Financial instability



Shyam Electric Works vs CIT(2005)  
149 Taxman 588 (MP HC)

Attachment of  
property & no other  
source of income/  
liquid assets



Shamraj Moorjani vs CIT(2005) 2 SOT  
321 (Hyd. Trib)



If the appeal is filed without the payment of tax on returned income but subsequently the required amount of tax is paid, the appeal shall be admitted.

[**Bhumiraj Constructions v CIT (Addl) (2011) 49 DTR 195 (Trib) (Mum)**]

# **Form-35 to file appeal before CIT(A)**

## **[Rule 45]**

- **An appeal to the CIT(A) shall be made in Form No. 35.**
- **The appeal is to be filed electronically after 01.03.2016.**
- **Check all pre-filled details - PAN, name, address, Phone number, email address and authority which has passed the order appealed against etc.**
- **Select assessment year.**
- **Insert details of the order appeal against - section and sub-section under which the order passed, DIN number, Date of order and Service of order**
- **Details of an appeal in relation to any other assessment year is pending in the case of the appellant with any CIT(A).**

## Form - 35

- If appeal relates to any assessment, provides details of appeal: amount of income assessed, total addition or disallowance, amount of addition or disallowance, disputed Demand etc.
- If appeal relates to penalty , provide details of the penalty order
- If the return has been filed, provide details of the taxes paid
- If assessee paid taxes under the influence of section 249(4), provide details of tax payment – BSR code, serial number etc.
- Statement of facts in brief – must not exceed 1000 words
- Grounds of appeal - each ground must not exceed 100 words
- If there is delay in appeal, enter the grounds for condonation - must not exceed 500 words
- Details of challan or appeal fee paid as prescribed in section 249(1) of the Act.



## Form - 35

- ➡ Form -35 does not accept special characters e.g. # & % “ ” ‘ ’ \* = + [ ] \ { } ! \$ etc.
- ➡ The following documents shall be required while filing form-35
  - \* Order against which appeal is being filed.
  - \* Notice of Demand
  - \* In case of appeal against penalty order, the order of penalty and the assessment order
- ➡ Attachments must not exceed 50mb in size and must be in pdf/zip format.
- ➡ Appeal is to be verified through DSC or EVC as the case may be, of the person who is authorized to verify the return u/s 140 of the Act

# Drafting of Statement of Facts

There is no prescribed format/order for drafting of Statement of facts.

The Statement of facts should have facts only and not the law points.

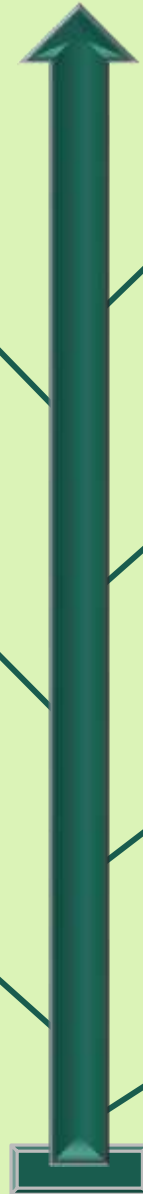
Facts should contain only those facts which are relevant and directly or indirectly connected with the additions made in the assessment order.

Summarised brief facts/story of the case is to be mentioned here.

Facts should be clear and should not be in argumentative form.

The facts should also cover those facts which are not considered by AO.

The facts should be comprehensive and complete



# Drafting of Grounds of Appeal

1

- There is no specific format for drafting of grounds of appeals.

2

- Grounds of appeal should be precise, comprehensive, clear and consecutively numbered

3

- Grounds of appeal should be based on law point as well as merit point

4

- Grounds of Appeal in order of additions made in assessment order.

5

- Separate ground for each addition must be taken.

# Grounds of Appeal

6

- Statement of Facts should not be mixed with Ground of appeal

7

- Must mention the Appellant craves leave to add/ alter/ amend/ withdraw any or all grounds of appeal before or at the time appeal proceedings

8

- There should not be repetition of same ground in different and colourful languages.

9

- Levy of interest, if any, should be taken as a ground of appeal

10

- Based on the issue, opportunity of being heard or principle of natural justice can also be taken as a ground of appeal.

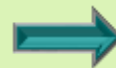
## Specimen - Grounds of Appeal

<b>Ground of Appeal</b>	
	1. That on facts and circumstances of the case, the order passed by the Ld Assessing Officer u/s 147/143(3) is bad both in the eyes of law and on facts.
	2. That on facts and circumstances of the case and in law, the Ld. Assessing Officer has erred in initiating the proceedings u/s 147 as there is no fresh material based upon which the notice u/s 148 has been issued.
	3. That on facts and circumstances of the case and in law, the Ld. Assessing Officer has erred in initiating the proceedings u/s 147 solely because of change of opinion.
	4. That the Ld. Assessing Officer has erred on facts and in law in making addition of Rs 8,30,00,000 under section 68 of the Act ignoring the fact of the case as well as submissions of the assessee.
	5. That the Ld. Assessing Officer has erred on facts and in law in completing the assessment on the basis of assumptions and surmises and totally ignoring the facts of the case.
	6. That the Ld. Assessing Officer erred in passing the order without giving opportunity of being heard.
1	7. That the provisions of section 234A, 234B and 234C are not at all applicable.
	8. That the impugned assessment order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.
	9. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.

# Stay of Demand

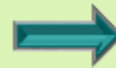
The filing of an appeal does not result in an automatic stay of the demand. It is required to file stay of demand before Assessing Officer.

In a case where the outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed demand.



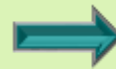
CBDOOffice  
Memorandum No.  
404/72/93-ITCC  
dated 29.2.2016

Stay may be granted without insisting on payment of 20% of disputed demand in cases of high pitched assessment and where circumstances so warrant



Filpkart India (P) Ltd  
v. ACIT (2017) 79  
taxmann.com 159  
(Kar)

The Assessing Officer/Pr. CIT/CIT shall dispose of a stay petition within 2 weeks of filing of the petition or review.



Disposal of stay petition  
within 2 weeks.

# Stay of Demand

on a petition for stay the authority concerned, is required to look into the prima facie. Merely saying that there is no prima facie case for grant of stay is not sufficient.



Bhilwara Spinners Ltd.  
(1991) 83 STC 181  
(Raj)

Paucity of funds can be a ground for stay



Sakarpatal Vibhag  
Kamgar Sahakari  
Mandali Ltd. v ITO  
(1992) 198 ITR 685  
(Guj)

**Stay can also be granted by CIT (Appeal):** The Madras High Court has held that the first appellate authority i.e. the CIT(A) has power to grant stay of demand as the power to grant stay of collection of tax is an inherent and incidental power of the appellate authority.



Paulsons Litho Works v  
ITO (1994) 208 ITR 676  
(Mad)

## **Rights reserved to Assessing officer while granting stay**

In granting stay the Assessing Officer may \_

- require an undertaking from the assessee that he will cooperate in the early disposal of appeal.
- 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;
- 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.



# Withdrawal of Appeal

There is no statutory law regarding withdrawal of appeal. However, various interpretations of the Courts can be observed in this regard.

Yogendra Prasad Santosh  
Kumar vs CIT [2014] 44  
taxmann.com 299 (All HC)



There is no provision in IT Act which permits withdrawal of an appeal, once it is filed, and registered”

M. Loganathan vs ITO  
[2012] 25 taxmann.com  
174 (Mad HC)



“Assessee, after filing appeal, could not at his option or at his discretion withdraw it; if it is done, in view of pendency of application before Settlement Commission, on rejection of settlement application, appeal proceeding would continue”

Jagmondas Gokaldas v  
CWT (1963) 50 ITR 578  
(Bom HC)



“true, an appellant can't as a matter of right claim to withdraw an appeal but there is nothing illegal in doing so with the permission of Appellate Authority”.

# Defective Appeal

The CIT(A) cannot straightway dismiss the appeal due to defect in the form-35 submitted by the assessee.

- The CIT(A) shall intimate the defects to the assessee and give reasonable time to cure such defects. – Malani Trading Co. vs CIT 252 ITR 670 (BOM)
- Appeal cannot be dismissed for defect in form without giving opportunity to the assessee. – Haryana State Roads and Development Corporation Ltd vs DCIT (ITAT Chandigarh) [ITA No. 582/Chd/2016]
- The assessee should be given reasonable opportunity of being heard to rectify the errors and the appeal shall be heard on merits. – Harilelas vs ITO 16 ITD 356 (MUM)

# Filing of additional evidence before CIT(A) [Rule 46A]

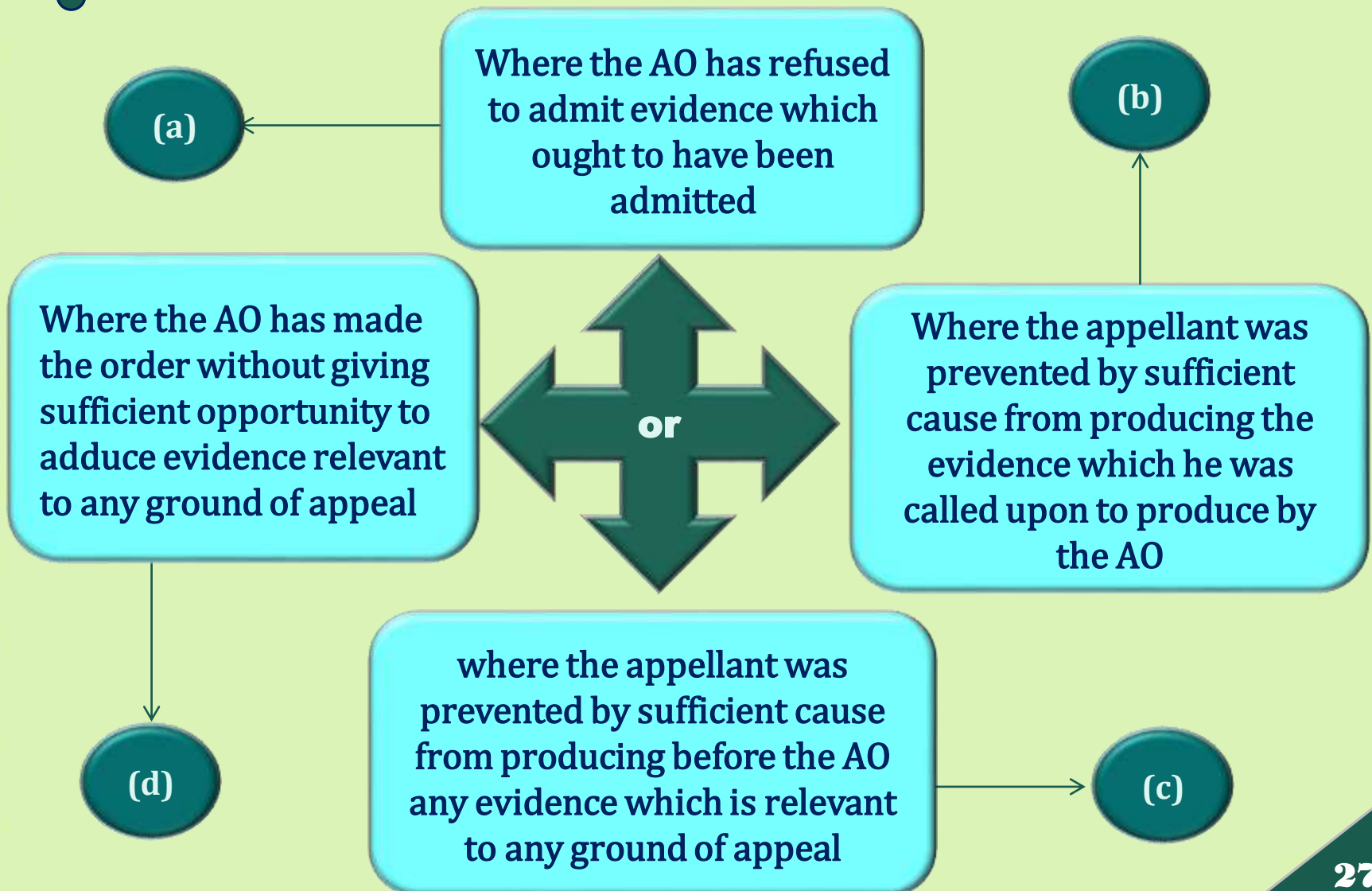
Additional evidence can be produced at the first appellate stage.

There is no prescribed format for additional evidence under rule 46A

Additional evidence can be filed when conditions stipulate in the Rule 46A are satisfied and a finding is recorded.



# Circumstances under which additional evidences can be filed [Rule 46A]



**Application for admission of Additional Evidence under Rule 46A**

**FACTS OF THE CASE**

1.....

2.....

**Most respectfully it is submitted that:-**

1. It is requested to accord kind permission for production of additional evidences as the assessee was not provided proper opportunity of being heard. Besides the evidences go to the very root of the matter and have a direct and substantial bearing in determining the correct income and tax liability of the assessee for the year under consideration.
2. Kind permission may kindly be accorded to adduce additional evidences which are compiled in the paper book Vol II.
3. Since the Assessee was prevented by sufficient cause from production of above evidences before the Ld. A.O.
4. It has been held in number of cases including in KESHAW MILLS CO. LTD. V CIT (1965) 56 ITR 365 and now recognized as RULE 46A that the appellant authority has a right to admit additional evidence in the interest of justice.
5. Similarly Hon'ble Jurisdictional Delhi High Court in CIT vs Hewlett Packard India (P.) Ltd. has upheld the decision of ITAT observing that CIT-APPEALS ought to have taken additional evidence on record. [2008] 173 TAXMAN 162 DELHI
6. It may kindly be appreciated that the assessee has filed all necessary details before the Ld. A.O. and whatever supporting documents could not be filed were only because of the reasons explained above.
7. The enclosed paper books are in duplicate with a request to kindly allow an opportunity to the ld .A.O. to rebut the same in terms of RULE 46 A(3).

Your good self is further requested to kindly record reasons in terms of RULE 46 A(2).

# Filing of Additional Grounds before CIT(A)

- ❑ Section 250(5) of the Act says that the CIT(A) may, at the hearing of an appeal, allow the appellant to go into **any ground of appeal not specified** in the grounds of appeal, **if the CIT(A) is satisfied** that the omission of that ground from the form of appeal was not wilful or unreasonable.
- ❑ In the case of **Jute Corpn. of India Ltd. vs. CIT [1991] 187 ITR 688**, the **Hon'ble Supreme Court** held that the Act does not contain any express provision debarring an assessee from raising an additional ground in appeal and there is no provision in the Act placing restriction on the power of the appellate authority in entertaining an additional ground in appeal.
- ❑ The Hon'ble Supreme Court in **Express Hotel Pvt. Ltd. v State of Gujarat (1989) 178 ITR 151** has held that the absence of the appeal provision doesn't make the provision per se unreasonable.
- ❑ There is no specific format for drafting the same.

Hon'ble CIT (A)

Date.....

Sir,

**Sub: Prayer for admission of additional grounds.**

The assessee begs to move the following grounds as additional grounds:-

1. That having regard to the facts and circumstances of the case, the impugned penalty order passed u/s 271(1)(c) is void-ab-initio and bad in law as Ld. AO did not clarify in the notice issued under section 271(1)(c) dated 5.12.2016 whether assessee has concealed the particular of the income or furnished inaccurate particulars of such income.

The above said grounds are purely legal grounds and do not require any fresh investigation of facts and therefore these may kindly be admitted in view of the judgment of Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. 229 ITR 383.

We shall be obliged.

Thanking you,

# Procedure in hearing appeal [Section 250]

- Submission along with Paper book is submitted before CIT(A)
- The CIT(A) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer (AO) against whose order the appeal is preferred.
- The appellant or its authorised representative and the AO or its representative shall have the right to be heard at the hearing of the appeal.
- The CIT(A) shall have the power to adjourn the hearing of the appeal from time to time.
- CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the AO to make further inquiry and report the result of the same



## Procedure in hearing appeal

- The CIT(A) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the CIT(A) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable
- The order of the CIT(A) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.
- In every appeal, the CIT(A), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him u/s 246A(1)
- Order should be passed within 15 days of the final hearing [ CBDT Instruction No. 279 dated 19.06.2015
- On disposal of the appeal, the CIT(A) shall communicate the order passed by him to the assessee and to the Pr.CCIT or CCIT or Pr.CIT or CIT.

## PAPER BOOK

Sl. No.	Particulars	Page No.
1	BRIEF SUBMISSION	1 - 18
2	Reasons recorded by the Assessing officer before issuing notice u/s.148	19 - 24
3	Copy of original order dated 12.03.2015 passed u/s.143(3) of the Act.	25 - 27
4	Copy of reply against notice dated 30.10.2014	28 - 30
5	Loan given confirmation by M/s. X.... Pvt. Ltd.	31 - 32
6	Loan receiving confirmations by M/s. X.... Pvt. Ltd.	33 - 36
7	Bank statement of assessee, reflect entries to receive loan from M/s. X Pvt. Ltd.	37 - 39
9	Balance sheets and P&L account of assessee for the relevant assessment year	46 - 71

### Certificate

**Certified that all the documents in the above paper book were before the Assessing Officer during the assessment proceedings.**

# Binding Effect of Judgments on CIT(A)

- All the judgements pronounced by the hon'ble Supreme Court are binding on all courts in India.
- All the judgements pronounced by jurisdictional High Court and ITAT are binding on the CIT(A).
- Where there are conflicting decisions of courts of co-ordinate jurisdiction ( the same rank), the later decision is to be preferred if reached after full consideration of the earlier decisions.
- When there are judgements on the assessee for previous years and the facts are the same, then they are binding on the CIT(A) for the subsequent assessment years.
- The Precedent ceases to have a binding force in the following situation:
  - \* If it is overruled or reversed by a higher court
  - \* When it is affirmed or reversed on a different ground
  - \* When it is non-speaking judgement.

# Early Hearing

The assessee may request for early hearing. Some of the circumstances are as under:

- ✦ If there is an immense pressure of payment of demand.
- ✦ If the matter in the concerned appeal is already covered in the appeal orders passed by the CIT(A), or any other appellate authority in assessee's own case.
- ✦ If the matter in the concerned appeal is covered by any circular or notification.

# Power of Enhancement

- ✚ In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;
- ✚ In an appeal against an order imposing a penalty, he may confirm or cancel or enhance or reduce the penalty
- ✚ Where proceeding before the Settlement Commission abates under section 245HA
- ✚ However, the CIT(A) shall not make any enhancement or reduction without giving reasonable opportunity of showing cause to the appellant against the same.

# Power of Enhancement

## [Judicial decisions against assessee]

- ⌘ CIT(A) can make addition in respect of new source of income if it is not considered by AO.  
[CIT vs. Nirbheram Daluram 224 ITR 610 (SC)]
- ⌘ CIT(A) may consider and decide any matter arising out of the proceedings, notwithstanding that such matter was not raised before CIT(A)  
[CIT vs Kanpur Coal Syndicate 53 ITR 225(SC)]
- ⌘ The competence of appellate authority ranges over whole assessment proceedings without restrictions on him. His jurisdiction therefore extends to subject matter of assessment and not confines to subject matter of appeal.  
[Ugar Sagar Works Ltd vs CIT (1983) 141 ITR 326 (Bom HC)]

# Power of Enhancement

## [Judicial decisions in favour of assessee]

- # “Whenever question of taxability of income from a new source of income is concerned which had not been considered by Assessing Officer, jurisdiction to deal with same in appropriate cases may be dealt with under section 147/148 and section 263 if requisite conditions are fulfilled and it is inconceivable that in presence of such specific provisions a similar power is available to first appellate authority”  
[CIT vs Sardarilal & Co. (2001) 251 ITR 864 (Del HC)]
- # Enhancement u/s 251 (1) (a) of the act is prohibited on the issues which have not at all been considered by the AO during assessment proceedings. The CIT (A) cannot enhance income of the assessee on altogether ‘new Source’.  
[GURINDER MOHAN SINGH NINDRAJOG v. CIT, [2012] 348 ITR 170 (Del) ]
- # CIT vs. Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)

# PEAK THEORY

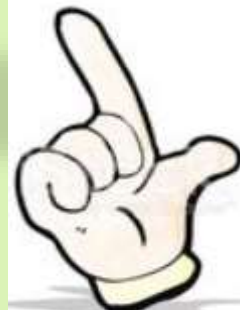
- ❑ Peak credit theory is the most common defence which an assessee may take in a case where there are a large number of unexplained credit and debit entries standing in the undisclosed account/documents of an assessee.
- ❑ Assessee may request the AO, not the aggregate but only the 'peak' of the credits should be treated as unexplained income.
- ❑ For claiming the benefit of peak theory, the factual foundation has to be first laid by the assessee before the Assessing officer.
- ❑ The assessee has to first own up all debits and credits before requesting application of the principle to work out income. This is one of the fundamental aspects as held in the case of [Bhaiyalal Shyam Bihari v. CIT \[2005\] 276 ITR 38\(All\)](#)



Where a statement covers a number of years, only the incremental peak pertaining to a previous year would suffer tax as illustrated in the table below:

Year	Peak of the year	Amount assessible as incremental peak credit
2016-17	20 lakhs	20 lakhs
2017-18	30 lakhs	10 lakhs
2018-19	15 lakhs	Nil
2019-20	35 lakhs	5 lakhs

The highest peak credit of Rs.35 lakhs



should suffer tax for various previous years as shown above.

# TELESCOPING

- ✦ The theory of telescoping is whereby an income is taxed / addition is made to taxable income in an earlier year. In such cases, the assessee may claim that the income arising in subsequent year / subsequent period is sourced out of the income taxed earlier.
- ✦ Where there is an addition on account of suppression of profit as also cash credit. It is open to the assessee to claim telescoping of estimated addition against the un-approved cash credit.
- ✦ The principle innunciated by the Supreme Court in CIT v. Devi Prasad Vishwanath [1969] 72 ITR 194 SC and CIT v. S. Nelliappan [1967] 66 ITR 722 (SC) are useful and may be referred to on the issue.

## **E-appeal proceedings** **[Section 250(6B) and 250(6C)]**

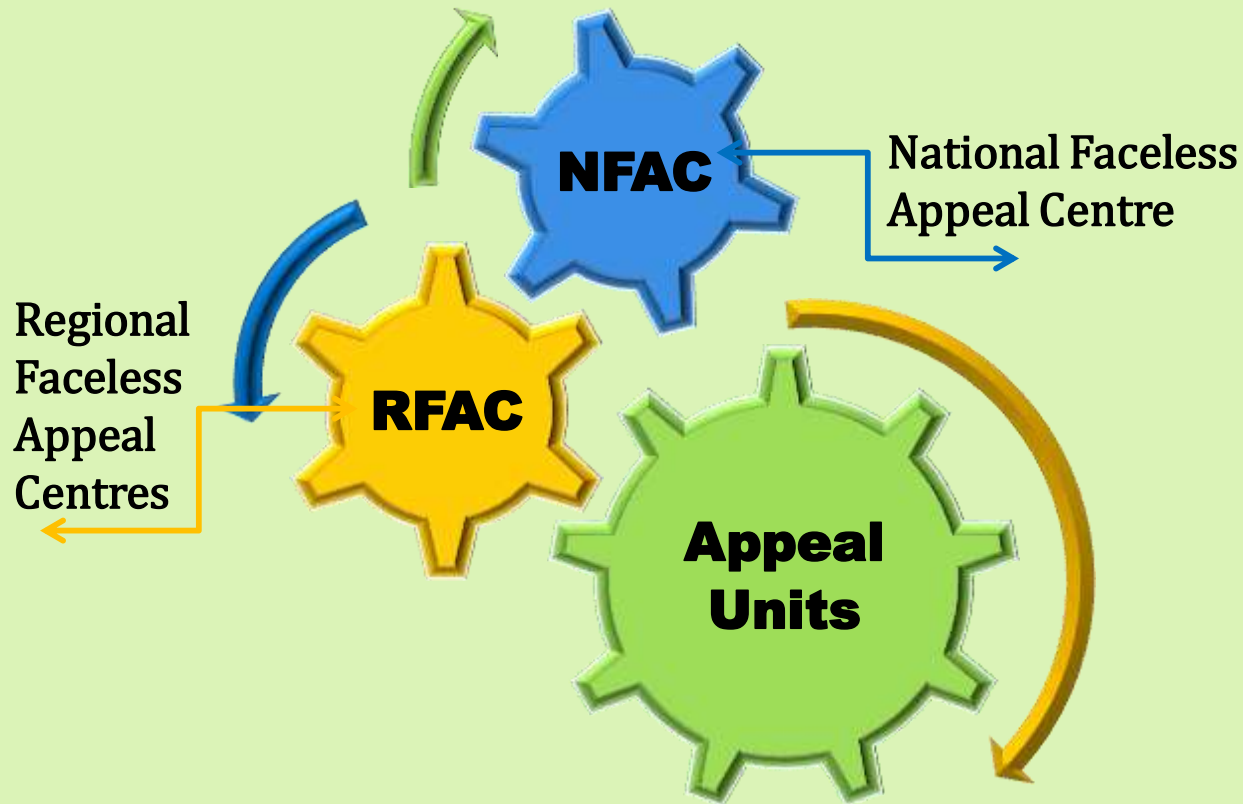
As per amendment made by the Finance Act, 2020, the Central Government may make a scheme of e-appeal by notification in the Official Gazette for the purpose of disposal of appeal by CIT(A) to impart greater efficiency, transparency and accountability by:

- ^ Eliminating the interface between the CIT(A) and the appellant
- ^ Optimizing utilization of the resources through economies of scale and functional specialization.
- ^ Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT(A).

The Central Government may for the purpose of giving effect to the scheme, direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

# Faceless Appeal Scheme

For the purposes of this Scheme, the Board may set up—





**National Faceless Appeal Centre** to facilitate the conduct of e-appeal proceedings in a centralised manner, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme

All communication between the Appeal Unit and the appellant or any other person or the National e-Assessment Centre or the Assessing Officer with respect to the information or documents or evidence or any other details, as may be necessary under this Scheme shall be through the **National Faceless Appeal Centre**.

**Regional Faceless Appeal Centres** as it may deem necessary to facilitate the conduct of e-appeal proceedings, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme





**Appeal Units**, as it may deem necessary to facilitate the conduct of e-appeal proceedings, to perform the function of disposing appeal, which includes :-

- ➔ admitting additional grounds of appeal,
- ➔ making such further inquiry as thinks fit,
- ➔ directing the National e-Assessment Centre or the Assessing Officer, as the case may be, for making further inquiry, seeking information or clarification on admitted grounds of appeal,
- ➔ providing opportunity of being heard to the appellant,
- ➔ analysis of the material furnished by the appellant,
- ➔ review of draft order, and
- ➔ such other functions as may be required for the purposes of this Scheme; and specify their respective jurisdiction.

# Procedure in Faceless Appeal

1. **NFAC** shall assign the appeal to a specific **Appeal Unit** in any one **REAC** through an automated allocation system
2. The Appeal Unit may request the **NFAC**
  - to obtain such further information, document or evidence from the appellant or any other person
  - to obtain a report of the Ne-AC or the Assessing Officer
  - to direct the Ne-AC or the Assessing Officer for making further inquiry u/s 250(4) of the Act and submit a report thereof
3. Appeal Unit after considering all relevant material on record, response by the appellant or report, etc. by the Ne-AC (National E-assessment Centre) or AO to prepare draft order

4. **NFAC** shall upon receipt of the draft order \_\_

If the aggregate amount of tax, penalty, interest or fee, including surcharge and cess, payable is more than a specified amount, as referred to in clause(x) of paragraph 13

send the draft order to an Appeal Unit, other than the Appeal Unit which prepared such order, in any one RFAC through an automated allocation system, for conducting review

in any other case

examine the draft order in accordance with the risk management strategy specified by the Board

Either, finalise the appeal as per the draft order

or, send the draft order to an Appeal Unit, other than the Appeal Unit which prepared such order, in any one RFAC through an automated allocation system, for conducting review




5. Review the draft order by **Appeal Unit** if referred to it by NFAC

Either, concur with the draft order and intimate the NFAC

or, suggest variation to the draft order

NFAC finalise the appeal order after receiving concurrence of the Appeal Unit:

On receiving the suggestions for variation for the Appeal Unit the NFAC to refer the review to other Appeal Unit other than the Appeal Unit which prepared or reviewed the draft order

- 
- 6. The other Appeal Unit to take appropriate action after considering the suggestions for variation**
  - 7. Upon receipt of revised draft order, the NFAC to pass appeal order and take other appropriate action like\_**
    - communicate such order to the appellant.**
    - communicate such order to the PCCIT or CCIT or PCIT or CIT as per section 250(7) of the Act.**
    - communicate such order to the National e-Assessment Centre or the Assessing Officer, as the case may be, for such action as may be required under the Act.**
    - where initiation of penalty has been recommended in the order, serve a notice on the appellant.**

**Thank  
You**



**Assisted by:**

***Adv. Chandrima Choudhury***

**Mobile: 8527588872**

***Dr. Ravi Gupta***

**Mobile: 9810060708**

**E-mail: ravirrg@gmail.com**