

# THE SPEAKING ARROW



**CIT Appeal Procedure**

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## Introduction

The Word ‘appeal’ refers to “a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher authority, or court of appeal”. Right to appeal under Income Tax law is a creation of statute and not an inherent right. Appeal can be filed only against the difference of opinion mentioned in the orders.

Initially, Income tax liability is determined at the level of Assessing Officer and if the assessee is aggrieved by various actions of the Assessing Officer, the assessee can appeal before Commissioner of Income Tax (Appeals) CIT(A). Further, appeal can be preferred before the Income Tax Appellate Tribunal (ITAT). On substantial question of law further, appeal can be filed before the High Court and even to the Supreme Court. With the ladder up approach appeal procedures are provided below:

Authority	Section
Appeal Before CIT (A) (First Appeal)	246A
Appeal Before ITAT (Final fact finding authority)	253
Appeal Before High Court (only if substantial question of law is involved)	260A
Appeal Before Supreme Court	261

## Commissioner of Income tax (Appeal)- CIT (A)

CIT (A) is the first appellate authority in the ladder. The appeal can be filed against the

various orders passed by Income tax authorities.

## Remedies available against the order of Assessing officer

CIT (A) is the First Appellate Authority under the Income Tax Act. It is the best opportunity to regularize various additions/ variations to returned income in the assessment order. The Assessee has two options either to:

Option 1	Option 2
Appeal before Commissioner of Income Tax (Appeals)[CIT(A)] u/s <b>246A</b> of Income Tax Act, 1961 (IT Act) or	Revision application (prejudicial to the Assessee) u/s <b>264</b> .

However, after filing an appeal before CIT (A), application for revision cannot be made to CIT or vice versa. Further, application for revision u/s. 264 cannot be made until the time for filing appeal before CIT has expired. No appeal is provided against the order of CIT passed u/s 264 but a writ-petition under Article 226 of the Constitution to the High Court is maintainable.

**Note:** There is an Alternative Dispute Resolution (ADR) mechanism called Dispute Resolution Panel (DRP) under the Income Tax Act, 1961 for resolving the disputes relating to Transfer Pricing in International Transactions.

**Person eligible for filing CIT (A)**

- Any assessee aggrieved by an order
- In case of **Firm**, by any **partner** of a firm
- In case of **AOP**, by any **member of AOP**.
- **Legal heir** in case of **deceased person**.
- **Managing Director or any director** in case of **company**
- **Karta** in case of **HUF**
- The representative assessee as defined u/s 160.

**Generally the following are the appealable cases before CIT (A)(list is inclusive and not exhaustive):**

1. An order against the assessee passed by AO u/s 143 (3) (Assessment order) and 144 (Best Judgement order)
2. An order of assessment, reassessment or re-computation under section 147 or section 150;
3. An order under section 154 (Rectification order) or section 155;
4. An order made under section 163 treating the assessee as the agent of a non-resident;
5. An order u/s 170(2) or 170(3) [Succession to business otherwise than on death;
6. An order u/s 171 (Assessment after partition of a Hindu undivided family)
7. An order u/s 201 (Consequences of failure to deduct or pay tax);
8. An order u/s 200A (Processing of statements of tax deducted at source)

9. An order u/s 237 (in case of refunds);
10. An order imposing penalty under section 221, 271, 271A, 271AAA, 271F, 271FB, 275(1A), 271B, 271BB, 271C, 271CA, 271D, 271E
11. Intimation U/s 143(1)
12. A person having deducted and paid tax U/s 195(1) may file for denying his liability to make such deduction and for a declaration that he is not liable to make such deduction.

**Note:** Any orders passed by Commissioner of Income Tax (CIT) cannot be appealed before CIT (A), in such cases the first appellate authority will be ITAT.  
Example: The order passed U/s 12AA and 80G.

**Orders which are not appealable before CIT (A)**

- Order levying interest on tax (Order to levy interest u/s 234A, 234B, 234C)
- Order rejecting Revision Petition (Orders passed u/s 264 rejecting Revision Petition)
- Order of AAR (Authority of Advanced Rulings)
- Order of SC (Settlement Commission)
- Orders with agreed additions (No one can be aggrieved by own admission)

Appeal before Commissioner of Income Tax (Appeals)[CIT(A)] u/s 246A of Income Tax Act, 1961 (IT Act)

The Gist of process flow to file and execute an appeal before Commissioner of Income Tax (Appeals) is enumerated below:

Receipt of an order along with notice of demand U/s 156 and penalty notice issued U/s 274 upon conclusion of proceedings before IT authorities.

Review of order and notice of demand passed U/s 156 of Income Tax Act, 1961.

After reviewing, if the assessee is aggrieved by the order passed by the IT authorities, then the Assessee can prefer an appeal before the Commissioner of Income Tax (CIT)- Appeal

Preparation of an application in Form No. 35 online for filing before CIT Appeals.

Filing of Form No. 35 (online) through Income Tax portal within 30 days of receipt of demand notice. Upon filing of Form No.35 online, the acknowledgment for filing Form No. 35 will be generated within 24 hours. However, as a precautionary measure we recommend to take the screenshot of transaction ID which will pop up upon the successful filing of Form No. 35 for the future reference.

In case there is a delay in filing Form No.35, an Application for condonation of delay specifying that there was sufficient cause for delay has to be filed.

Pay the Appeal fee as prescribed

Submission of manual Form No. 35 to the respective jurisdiction for ease of proceedings at the time of hearing. The manual submission should consists the following documents along with the cover letter:

1. Signed Manual Form No.35 by appellant or respective authorized person.
2. Online Form 35.
3. Statement of facts and Grounds
4. Copy of order passed by Income Tax Authorities.
5. Original demand notice passed U/s 156 of Income Tax Act.
6. Appeal fee Challan.
7. Acknowledgment for filing Form 35
8. Power of attorney in favour of Authorised representative along with stamp paper

Prepare an application for stay of demand issued U/s 156 within 30 days of receipt of notice of demand and submit the same before AO along with cover letter, payment Challan and acknowledgment for filing Form No. 35

Pay 20% of demand outstanding as per the office memorandum issued by CBDT dated 31st July, 2017

File a letter before AO for keeping the penalty proceedings in abeyance until the conclusion of the issue under dispute before CIT (A). Upon submission of Form No. 35, the CIT (A) will fix the date and place for hearing the appeal.



CIT (A) will serve the notice of hearing. Upon receipt of such notice the appellant needs to prepare Written Submission to substantiate the plea raised in Grounds of appeal in the application before CIT (A) through Form.No.35 and submit the same at the time of hearing before the CIT.



The CIT (A) will hear the case and may adjourn the hearing from time-to-time, if required.



Further, assessee may produce any additional evidence to substantiate his plea under rule 46A.



The CIT (A) call for remand report from Assessing Officer for further verification of additional documents made available.



Based on merits of the case and explanations/documents available, the CIT (A) will pass the order U/s 250 of the Income Tax Act, 1961. The CIT (A) can pass the order,

- In favour of Revenue i.e. appeal is dismissed, or
- In favour of Assessee i.e. appeal is allowed, or
- Partly allowed

Further if the Assessee is aggrieved by the appellate order, he may appeal before ITAT (Income Tax Appellate Tribunal) U/s 253 of the Income Tax Act, 1961 within 60days of receipt of the order. Also the appeal before ITAT can also be filed from department end.



#### Time limit for filing an appeal to CIT:

The Form-35 should be filed within 30 days of the following date:

- Where the appeal relates to any assessment or penalty; ***“the date of service of the notice of demand.”***
- In other cases; ***“the date on which such intimation of the order is served.”***

In such cases we must establish the date of receipt of the order by having tracking details of the order received through post or by E-mail. Suggested to retain the postal envelop bearing the seal (date) of delivery.

**Spotlight:** *Suppose the Assessment order is passed on 05<sup>th</sup> June, 2018 and the date of service or receipt of order by the Assessee through post or E-mail is 08<sup>th</sup> June, 2018.*

*Form No.35 to be filed within 30 days from the following date of service or receipt of order. In the above example, the due date for filing Form 35 will be 8<sup>th</sup> July, 2018.*

### Condonation of Delay:

Application for condonation of delay must be made specifying that there was a sufficient cause for delay.

In case, if the time has elapsed to file an appeal before CIT(A) then the assessee has to file an application for Condonation specifying sufficient cause for delay and try to justify each day of delay.

*Example for delay: Appellant travelling outside India, illness, ignorance by the employees of the assessee etc., (the reasons should be supported by the evidence to substantiate the reason) for non-filing of appeal before due date along with Form No. 35.*

The CIT (A) can condone delay in filing of appeal under section 249(3) if satisfied that delay was due to “**sufficient cause**”.

The CIT has discretionary powers of condonation which should be exercised judiciously. The CIT should have a pragmatic and liberal approach.

Affidavit duly notarized supporting condonation of delay must be made.

The condonation of delay should be positively recorded in the order sheet before the appeal proceedings starts.

In a particular case, the CIT (A) had condoned the delay and started the hearing on merits, but the same was not recorded in the order sheet. Further, the CIT (A) got transferred and the new CIT (A), who took the charge was not aware of the fact and denied the condonation.

### Affidavit:

Assessee must give due consideration to the manner of drafting and filing affidavits. The function of swearing on oath is different from the function of simple attestation of an instrument as held in the case of Kunal Suranav. ITO [2014] 144 ITD 195 (Mum). The following points regarding affidavits merit consideration as per this decision:

- (i) The affidavit must not be vague and general in nature. It should be to the point sufficiently explaining the cause for delay and demonstrating the bona fides of the assessee;
- (ii) It must be divided into paragraphs and each paragraph must be numbered consecutively, and as nearly as may be, shall be confined to a distinct portion of the subject;
- (iii) Affidavit must state how much of it is based on knowledge and how much of it is based on belief and the grounds of belief must be stated –State of Bombay

- v. Purushottam Jog Naik AIR 1952 SC 317;
- (iv) Affidavit must be properly endorsed by the notary regarding oath of affirmation before him by the executant of the affidavit;
- (v) The place and date of administration of oath must be mentioned;
- (vi) The words “sworn before me” must be mentioned by the notary on the affidavit;
- (vii) Executant must sign the affidavit before the notary;
- (viii) The notary must sign the affidavit, put official notary seal and stamp, mention his registration number and also the General Register Number (unique for each document executed before the Notary) on the affidavit.

While every effort must be made by the assessee to explain the delay with appropriate documentary evidence, the decision in the case of Vasu & Co.v.State of Kerala (2001)10KTR30 (Ker.) may be referred to, wherein it has been held that if the court was satisfied that sufficient explanation had been given for condoning delay, then the affidavit could be accepted as evidence and insistence of proof of what had been stated in the affidavit would only prolong litigation.

#### Appeal fees:

The fees for filing the appeal before the Commissioner of Income-tax (Appeals) are as follows:

If Assessed Income is	Appeal fees
Rs. 1,00,000/- or less	Rs. 250/-
Rs. 1,00,001 to Rs. 2,00,000	Rs. 500/-
Rs. 2,00,001 or more	Rs. 1,000/-
Where subject-matter of appeal is not covered under any of the above	Rs. 250/-

Total income determined at negative figure - **“Minimum fees”** [*Gilbs Computer Ltd. Vs. ITAT - 317 ITR 159(Bom)*]

#### Steps for paying Appeal fee:

1. Enter the site <https://www.tin-nsdl.com>
2. Click on E payment - Pay taxes online
3. Select Corporation Tax  
(Companies) **(0020)** / (0021) INCOME-TAX Other than companies
4. Fill the other required details
5. Select type of payment as Self-Assessment tax (300)
5. Select your bank from the options given click on Submit and enter into Retail Users and key in your Bank Username & Password.
6. Enter the appeal fee as prescribed and applicable in the others column.
7. After payment the Challan / tax paid count erfoil is generated. Save the same for the future reference.

Condition precedent – Payment of Tax

- Appeal shall not be admitted unless
  - A) Tax is paid, as per Return of income.
  - B) Where no ROI is filed, paid an amount equal to the amount of Advance tax payable.
- The CIT(A) may for any good and sufficient reason recorded in writing exempt from payment of Advance tax.
- Assessee having paid the tax due before issuance of show-cause notice, the requirement of section 249(4) stood fulfilled.  
*CIT vs. Rama Body Builders (2001)250ITR825(Del)*
- Section 249(4) cannot be read down to restrict to appeals against assessment only and it will apply to penalty appeals also [*S. Alagarswamy Vs. ITO 296 ITR 43*]
- Provisions of s.249(4) are relevant only in the context of an appeal which is relatable to the assessment of income, i.e. appeals against the assessment orders and against the orders imposing penalties in connection with the assessment of income and therefore provisions of s.249(4) will not apply in case of appeal against penalty s.221.
- *Satyan Enterprises vs JCIT 93 ITD 606*- Tax does not include interest.

Procedure in CIT (A) Section -250

- Notice to AO and Assessee intimating the date and place of hearing by CIT (A).
- Following shall have right to be heard:
  - a) the appellant in person or through his AR
  - b) the AO or his AR.
- 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 i.e. remand report.
- Additional ground may be allowed, at the time hearing of an appeal, if satisfied that the omission was not wilful or unreasonable.
- The order of the CIT(A) shall be in writing stating the point for determination, the decision thereon and the reason for the decision.
- The CIT(A) may, as far as 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.

Powers of CIT (A) –Section 251:

- To confirm, reduce or enhance the assessment. The CIT (A) has power to inspect the other matters for which the appellant had filed an appeal.
- Empowered to make further enquiries after disposing of an appeal.

- May allow the taxpayer to go for any ground of appeal, even if not mentioned in ground of appeals. But the omission of additional ground should not have been wilful or unreasonable.
- Can condone the delay in filing of appeal.
- Empowered to rectify any mistake apparent on record.
- Can cancel or confirm or enhance or reduce penalty order, where appeal is filed against order of penalty.
- Empowered to stay the demand of AO for a maximum period of 180 days.
- Empowered to pass any order against the taxpayer. However, giving the appellant reasonable opportunity of being heard is the preceding condition. Such order may include:
  - a. Enhancing assessment (increase in tax or taxable income or penalty) or,
  - b. Reducing the refund.

#### Restrictions/Limitations on CIT (A)

- No power to review except power of rectification U/s 154.
- CIT (A) cannot refer the case back to AO for fresh assessment.
- CIT (A) does not have the power to set aside the assessment order.

#### Filing of additional evidences

During the appeal proceedings before the CIT (A), the taxpayer is permitted to produce only those evidences (whether oral or

documentary) which were produced by him before the Assessing Officer. In other words, the CIT (A) will not permit the taxpayer to produce any additional evidences which were not produced by him before the Assessing Officer. However, the CIT (A) has powers to accept Additional evidence as provided under rule 46A under the following circumstances:

(a) Where the Assessing Officer 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 be produced by the Assessing Officer; or [As amended by Finance Act, 2018]

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

(d) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

- Normally, the taxpayer has to make an application for acceptance of additional evidences. In other words, the additional evidences are to be accompanied with an application stating the reasons for their admission. On receipt of such an application, the CIT (A) may admit the same after recording reasons in writing for the admission of these evidences.

- Before considering the additional evidence, the CIT (A) must:
  - Allow the assessing officer a reasonable opportunity to examine the evidence or document or to cross examine the witness produced by the appellant, or
  - To produce any evidence or document or any witness in contradiction of the additional evidence produced by the appellant.

In an elaborative note, the CIT (A) has to provide an opportunity to AO for providing his comments on the said additional evidences filed thereby as a remand report. This is pertinent for the reason that even if the additional evidences are admitted but opportunity is not given to the AO, and if the appeal is allowed by the CIT(A) taking perception of the additional evidences, the department will take simple ground before the Tribunal that there has been violation of principle of natural justice by not giving opportunity to AO thereby violating the provision contained in Rule 46A. The Tribunal, if found correct, without going into the merits of the case would simply set aside the matter and all the hard work would go in vain. Hence, even in submission filed before the CIT (A), wherever the point covered has additional evidence, it is advisable to request the learned CIT (A) to call for the remand report on the additional evidences from the AO and to obtain rejoinder for the same from the Appellant.

### Raising Additional Grounds

Sub-section 5 of Section 250 gives power to the CIT (A) to allow the appellant to raise additional ground if he is satisfied that the omission of that ground was not wilful or unreasonable. If at any stage, either before the commencement of the appeal proceedings or thereafter, it is found that some vital ground of appeal remained to be taken, the same must be raised by way of additional ground of appeal. The additional ground of appeal must be appended with a covering letter giving in detail the reasons as to why the same could not be raised at the time of filing of the appeal i.e. in short there must be a condonation of delay petition filed along with the additional ground of appeal. This condonation petition must be with a plea requesting the CIT(A) to admit the same and condoning the delay for the same. As such, the delay has to be explained in terms of each day, however, appropriate reasonable cause must be there to show that why the same could not be filed earlier. This petition along with reasonable cause must be appended also in cases where the additional ground to be raised is in respect of the legal issue to be on a safer side. Further, the condonation petition is to be submitted along with the affidavit declared by the person who is authorised to sign the necessary relevant documents by swearing the reasons provided in the affidavit are true and correct.

Further, it is advisable to file submission with respect to the point in issue in respect of which

the additional ground of appeal is raised. This is for the reason that at the time of hearing, the CIT(A) may accept and admit the additional ground of appeal and hence, one should be ready with the submissions along with the documentary evidences in that behalf.

### **Spotlight**

*In a particular case, the Assessing Officer has erred in completing the Assessment Proceedings U/s 143(3) without the issuance of notice u/s 143(2), hence the assessment is considered as void – ab – initio and in pursuant the assessment order passed is invalid in law. Issuance of notice u/s 143(2) within the statutory time limit is mandatory. Also, In case the assessment proceedings are completed u/s 147 r.w.s 143(3) the assessment order will be considered as invalid if the notice U/s 143(2) has not been served with in the statutory time limit. In this particular case, the assessment proceedings were completed u/s 147 r.w.s 143(3) without the issuance of notice u/s 143(2). However, while filing of Form No. 35, assessee was not aware of non-issuance of notice U/s 143(2). Further, during the course of proceedings the assessee became aware that he is not in receipt of notice u/s 143(2) and the same has been placed as an additional ground before CIT (A) stating that the AO has not followed the compliance procedure. Thereby the assessee has good merit to fight against the aggrieved order passed by the lower authorities on the basis of contention of law. Hence, the assessee has to consider the compliance procedure along with the technical facts while appealing before CIT (A).*

### Death of an Assessee

Where an assessee to an appeal dies or is adjudicated insolvent or in the case of the company wind up, the appeal will not abate and will continue against the executor, administrator or other legal representatives of the assessee or by or against the assignee, receiver or liquidator as the case may be.

In case of death of assessee, the legal heirs of the assessee must file copy of death certificate and an affidavit of as being the legal heirs.

A fresh memorandum of appeal signed by the legal heirs must be filed before the CIT (A) (Appeals) where the assessee is the appellant so that the legal heirs are brought on record.

### Withdrawal of Appeal

- Appeal once filed cannot be withdrawn by the appellant. The Assessee should make an application to withdraw the appeal to CIT (A).
- However, the appellate authority in its discretion may allow withdrawal of appeal.
- In CIT v. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC) it has been held that: “It is also well-established that an assessee having once filed an appeal cannot withdraw it. In other words, the assessee having filed an appeal and brought the machinery of the Act into working cannot prevent from ascertaining and settling the real sum to

be assessed, by intimation of his withdrawal of the appeal. Even if the assessee refuses to appear at the hearing, the Appellate Assistant Commissioner can proceed with the enquiry and if he finds that there has been an under-assessment, he can enhance the assessment’.

- Although the assessee has no power to withdraw the appeal filed before the CIT(A) as per 66 ITR 443(SC) (supra) **but the CIT(A) or Appellate Authority is satisfied that there will be no prejudice to revenue may allow to withdraw. [Bhartia Steel & Engineering Co. P. Ltd. Vs. ITO 97 ITR 154(Cal)].**

#### Presentation before the CIT (A)

- Study the assessment order in depth and carefully understand the facts of the case and the background involved in each addition.
- Study all the replies filed before the AO during the assessment proceedings
- Identify the weak points in relation to each additions made.
- Examine whether any additional evidence is to be taken. If so, draft an appropriate application under Rule 46- A.
- File the application under Rule 46-A along with documentary evidence in support of your claim as far as possible.
- Prepare paper book with index containing all written submissions filed, evidences in support of assertions made in the written submissions.
- Prepare exhaustive written submissions relevant to each ground of appeal. Highlight the important submissions in bold or italics.
- Make special efforts in emphasizing as to how and why the AO was wrong based on actual facts and legal issues. Controvert the stand taken by the AO duly supported by documentary evidences, legal position and decided cases by the courts.
- Reliance be placed on the decisions of the Apex Courts, Jurisdiction High Court and ITAT.
- Revenue authorities have to follow decision of jurisdictional High Court. [CIT Vs. G. M. Mittal Stainless Steel (P) Ltd. (2003) 130 Tax man 67/ 263 ITR 255 (SC)]
- Care need to be taken while placing reliance on case laws. Examine the cases for and against. As far as possible, distinction be made between the cases which are against.
- Distinguish the cases relied upon by the AO.
- Have proper knowledge of all facts of the case. Reply to the queries raised by the CIT (A) be offered promptly and to the point.

**Spotlight:**

*In the particular case, the assessee had filed an appeal before the CIT(A) aggrieved by the Intimation order U/s 200(A) w.r.t TDS payments in result of demand raised by jurisdictional assessing officer. Whereas there has been subsequent Intimation order U/s 154 passed based on the rectification filed by Assessee company. During the time of filing the appeal, the assessee company has considered the Initial Intimation order U/s 200(A) passed by AO and filed Form No. 35 by relying on the same. Further, the assessee appeared before the CIT(A) and the CIT(A) has suggested that the appeal has to be filed against the latest rectified order U/s 154 based on the actual outstanding amount and accordingly, advised the assessee to withdraw the earlier appeal and file new appeal against 154 order passed by the competent authorities.*

In this regard, the assessee has to rely upon the latest order and should provide proper reference while filing the appeal, even if the assessee has a very good case on merits of the matter based on facts and judicial pronouncements, the CIT (A) may quash and dismiss the appeal filed by the assessee for filing an appeal under wrong section which invalidates the proceedings.

**Checklist for filing CIT (A)**

- On receipt of order and notice of demand, note the date of service of order and notice of demand.
- In case if original demand notice is not received, make an application and obtain acknowledgment. Ensure you obtain original certified copy and not just a photocopy.
- Copy of submissions made before the Assessing Officer should be collected.
- Call for all the notices particularly notice U/s 143(2), 142(1) and show cause notices issued during assessment proceedings and replies thereto. In case of reassessment call for notice U/s 148, reply thereto, record reasons, objection to reopening and order disposing objections, copy of sanction. Take necessary action if the assessee don't have the same.
- Where the statement during survey, search, or assessment proceedings are relied upon by AO or statement of third parties are relied upon or third-party evidences are relied upon call for the same. Take necessary action if the assessee doesn't have the same.
- Also apply for order sheet if the AO has relied upon the same.
- Find out if AO has recorded that Assessee has agreed for additions.
- Ascertain whether the reasons were explicitly or impliedly covered by the Show-Cause Notice.
- Ascertain whether any reasons for addition/disallowance not covered by the Show-Cause Notice require production of additional evidence.
- Ascertain whether additional evidences are required, to meet the objections of the

- AO. If yes then ascertain cogent reasons for not filing the same before AO.
- Ascertain whether it is possible to arrange additional evidence before expiry of period of limitation.
  - Find the point of grievance. Prepare a reconciliation of return income and assessed income.
  - List out the additions made, disallowances, whether a notice was issued u/s. 143(2) for assessment and the order passed are within the prescribed time limit
  - Prepare application for rectification u/s. 154 in respect of mistakes, which are apparent from record.
  - While filing the appeal we have to provide correct base reference to the order for which assessee is aggrieved based on the Intimations/proceedings/rectification passed by the Income tax authorities.
  - Fill Form No. 35. Prepare a statement of facts and the grounds of appeal.
  - Ensure compliance of sec. 249 (4). Payment of taxes and interest.
  - Pay appropriate appeal-filing fees.
  - Grounds of appeal should be simple, concise, aptly worded, and serially numbered issue-wise.
  - Statement of facts should highlight each and every fact, since there is only one opportunity for filing the statement of facts.
  - Ensure to incorporate all additions, disallowances made in the assessment order from different angles i.e. put alternative claims with the words “Without prejudice to above”.
  - After raising all the grounds of appeal, crave leave to add, to amend, alter, modify, delete, etc. any of the grounds of appeal without which the CIT(A) may not allow to take some additional grounds or even withdraw the appeal.
  - Ensure that the audit memo, grounds of appeal, statement of facts, etc. are signed and verified by the person who is authorised to sign the return of income u/s 140 of the Income-Tax Act.
  - Ensure that the appeal is filed with the jurisdictional CIT (A) as mentioned on the rear side of the demand notice after verification of same.
  - File a stay-petition with the Assessing Officer in respect of demand within 30 days of the date of service of the order.
  - File a letter requesting to keep the penalty in abeyance.

#### Can An Appeal Be Signed By an Advocate / Chartered Accountant / Authorised Representative

As per Rule 45 of the Income Tax Rules, 1961, the form of appeal i.e. Form No. 35, the Grounds of Appeal and the form of Verification attached thereto shall be signed & verified by the person who is authorized to sign the return of income under section 140 of

the I.T. Act, 1961. Thus it can be inferred that only in the case of an individual or a company which is not resident in India, the return can be signed by a person who holds a valid power of attorney, which shall be attached to the return.

There are different views on the issue as to whether a defect in signature would render the appeal a nullity. The Hon'ble Calcutta High Court in Sheonath Singh v. CIT 33 ITR 591 has held that the absence of or defect in the signature of the appellant is not fatal so as to render the appeal a nullity and it is an irregularity which can be rectified and will be treated as having being rectified retrospectively whereas the Hon'ble Allahabad High Court in Special Manager, Court of Wards, Naraindas Narsinghdas v. CIT reported in 18 ITR 204 has taken a contrary view and held that where the signature on the appeal was that of an agent, the appeal filed was invalid.

#### CIT (Appeals) with respect to order passed U/s 143(3) r.w.s 147

- Detailed analysis of Assessment order passed U/s 143(3) for facts of the case.
- Collect and analyse the reasons and objectives for re-opening of case.
- Accepting or revision of return filed.
- Analyse the procedure of assessment. The procedure should be as mentioned below:

- Receipt of notice u/s 148 for income escaping assessment u/s 147
- Receipt of notice u/s 143(2)
- Receipt of notice u/s 142(1)
- Receipt of Assessment order passed u/s 143(3) r.w.s 147.

#### Filing of stay application and letter to seek abeyance for penalty proceedings:

Filing stay petition before Assessing Officer for stay of demand until the disposal of the Appeals before CIT(A). In case of Appeals filed before CIT(A), the CBDT has issued Office Memorandum dated: 29/02/2016 instructing the Assessing officer to grant the stay of demand if the Assessee has paid 20% of the demand amount.

We need to draft Stay petition in such a manner that it should contain, facts and submission of the case i.e., merits, stress on violations of principles of natural justice by AO if any, past record of the assessee with the income tax department, plea that appeal is pending and application for early hearing is made, ratio between returned income and assessed income and hardship that will be faced by the assessee.

“In view of the above submissions, it is respectfully submitted that assessee has a good chance to succeed on merits. Further, if stay of demand is not granted great prejudice and injury will be caused to the assessee.”[Mandatory clause].

In case Assessee has to obtain the stay by paying lesser amount or without payment of demand as prescribed in CBDT memorandum, In such case Assessee has to file an application for stay before A.O. to grant the stay of demand at the rate which the assessee can afford by demonstrating the hardship faced by the appellant and pray before the A.O. for granting stay at lower amount or grant of stay without payment of demand.

**Spotlight:** *In the particular case, the AO has disallowed all the payments made to non-resident in the order passed u/s 201(1) for non-deduction of TDS. In this regard, as per the procedure the assessee has to pay 20% of demand amount for stay of demand. The Assessee was in huge financial difficulty and was not in a position to pay 20% demand. Based on the genuine difficulties faced by the assessee to pay the demand amount and merits of the case, we filed a stay application before AO. In this regard, the AO reduced the amount payable for stay of demand to less than 20%.*

Also, the Assessee has to submit a letter before A.O praying not to initiate any penalty proceedings and the penalty proceedings has to be kept in abeyance.

#### Steps for paying the demand outstanding:

1. Enter the site <https://www.tin-nsdl.com>
2. Click on E payment - Pay taxes online
3. Select Challan no. 280
4. Fill in the details - (select Corporation Tax (Companies) **(0020)**/ (0021) INCOME-TAX

Other than companies, type of payment shall be Tax on Regular Assessment(400), select appropriate Assessment Year and fill the total demand amount under the Basic Income tax row)

5. Select your bank from the options given click on Submit and enter into Retail Users and key in your Bank Username & Password.
6. Fill the Entire amount of Demand payable under the First row i.e., 'Basic Income tax'
7. After payment the challan / tax paid counterfoil is generated. Save the same for the future reference.

#### Making a claim/relief for the first time before Appellate Authority

- If there was evidence or material on record, then only a claim made for the first time be entertained by the Appellate Authority. CIT v. Western Rolling Mills Pvt. Ltd. 154 ITR 54 (Bom).
- The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessee in matters affecting their interests and convenience. **Circular No.14 (XL-35) of 1955, C.No.13 (207)-IT/50, dated 11<sup>th</sup> April, 1955**, states that the Officers of the Department must not take advantage of ignorance of an assessee as to his rights.
- However, the decision of S.C. in the case Goetze (India) Ltd vs. CIT 284 ITR 323

(SC) has held that it was open to the assessee to raise new points of law before the Tribunal. The Tribunal has such powers u/s.254 of the Act.

- A.O. is bound to assess the correct income and for this purpose the Assessing officer may grant relief's/refund suo motu or can do so on being pointed out by the assessee in the case of assessment proceedings for which assessee has not filed a revised return.
- CIT(A) can entertain new claim in absence of revised return.  
-APL India (P) Ltd v Adln CIT(2013) 58 SOT 41(URO)(Mum) (Trib).
- However, the A.O. cannot entertain a claim for deduction otherwise than by filing a revise return.
- In case where assessment is not pending and the time available for filing a revised return is also expired, the only remedy is to seek extension of time u/s. 119(2) from the Board for filing a delayed return in case of genuine hardship. [Bombay Mercantile Co-op Bank ltd v CBDT (2010)45 DTR 377(Bom)(HC).
- The assessee can also file rectification application u/s. 154 on facts of the case or make an application to CIT u/s 264.

### Rectification of Order u/s 154

Sometimes there may be mistake in any order passed by the Income tax authorities. In such

a situation, mistake which is apparent from the record can be rectified under section 154.

The various Orders which can be rectified under section 154

- Order passed under any provisions of the Income-tax Act.
- any intimation or deemed intimation sent under section 143(1)
- any intimation sent under section 200A(1) [section 200A deals with processing of statements of tax deducted at source i.e. TDS return].
- any intimation under section 206CB

Further, if an order is the subject-matter of any appeal or revision, any matter which is decided in such an appeal or revision cannot be rectified by the Assessing Officer. In other words, if an order is subject matter of any appeal, then the Assessing Officer can rectify only those matters which are not decided in such appeal.

### Intimation of rectification

- The income-tax authority can rectify the mistake on its own motion.
- The assessee can intimate the mistake to the income-tax authority by making an application to rectify the mistake.
- If the order is passed by CIT (A), then the CIT(A) can rectify mistake which has been brought to notice by the Assessing Officer or by the assessee.

**Time-limit for rectification**

No order of rectification can be passed after the expiry of 4 years from the end of the financial year in which order sought to be rectified was passed. The period of 4 years is from the date of order sought to be rectified and not 4 years from original order. Hence, if an order is revised, set aside, etc., then the period of 4 years will be counted from the date of such fresh order and not from the date of original order. In case an application for rectification is made by the assessee, the authority shall amend the order or refuse to allow the claim within 6 months from the end of the month in which the application is received by the authority.

**The procedure to be followed for making an application of rectification**

- The taxpayer should carefully study the order against which he wants to file the application for rectification.
- Many times the taxpayer may feel that there is any mistake in the order passed by the Income-tax Department but actually the taxpayer's calculations could be incorrect and the CPC might have corrected these mistakes, e.g., the assessee may have computed incorrect interest in return of income and in the intimation the interest might have been computed correctly.
- Further to avoid application of rectification in above discussed cases the

taxpayer should study the order and should confirm the existence of mistake in the intimation, if any.

- If the assessee observes any mistake in the order then only the assessee should proceed for making an application for rectification under section 154.
- The Assessee should confirm that the mistake is one which is apparent from the records and it is not a mistake which requires debate, elaboration, investigation, etc. The taxpayer can file an online application for rectification of mistake.
- An amendment or rectification which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the taxpayer (or Deductor) shall not be made unless the authority concerned has given notice to the taxpayer or the Deductor of its intention to do so and allowed the taxpayer (or the Deductor) a reasonable opportunity of being heard.

**Preparation and submission of written submissions:**

Upon receipt of notice of hearing from CIT (A) to represent the case based on our previous submission, the assessee/ authorised representative has to submit written submission before appearing for the hearing. The 'Written Submission' should contain the following:

- Detailed arguments of each ground mentioned in "Grounds of Appeal".

- Ground should mention Section, amount in dispute and prayer. It should be concise and precise. What aspect of a ground is challenged must be stated. Ground should not contain caselaws. It should in one or two lines explain the argument of the Assessee. Ground should be exhaustive so that additional ground is not required to be taken subsequently as same would be time consuming. Don't use words like "grossly erred". Alternative plea should be taken.
- Drafting of Statement of facts is very crucial as there are no statement of facts to be filed before ITAT. Also, it is the first opportunity in appeal to state correct facts and a possible strong defence against any additional evidence being alleged as an after-thought.
- Relevant quotation of case laws which are in support of our claim and contention.

Extracts of the sections/rules/circulars of respective acts which supports and explains our claims and contentions.

In case if the condonation application is filed the same will be taken up for hearing before taking up the case on merits.

### Disposal of appeal

- The CIT (A) shall dispose the appeal within a period of one year from the end of the financial year in which appeal is filed. The order should be issued within 15 days of last hearing.

- The CIT(A) has to pass a speaking order dealing with each grounds of appeals and CIT(A) should pass the order on merits even though heard or assessee did not appear CIT vs. Chennaippa 74 ITR41(SC)
- The CIT(A) cannot apply Multiplan (India) Ltd. 38 ITD 320, decision and dismiss the assesses appeal exparte for non-appearance. Gujarat Themis Biosyn ltd v/s.Jt CIT 74 ITD 339(Ahd). CIT v Premkumar Luthra (HUF) (2016) 240 taxman 133 (Bom)(HC).

### Appellate Order giving effect

- After conclusion of hearing the CIT (A) will issue an order of the appeal.
- If it is in favour of the assessee, either in full or partial, he has to file a request with AO for order giving effect.
- If the order is not in favour of assessee, the assessee has to take call to file second appeal before jurisdictional ITAT within 60 days.



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