

APPEALS AND REVISION UNDER INCOME TAX ACT, 1961

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INTRODUCTION

- The income tax procedure starts with the Assessee filing Return of income.
- The first stage after the filing of the Return of income is the Assessement of the same by the Assessing Authorities.
- The appeals and revisions comes in to picture on the assessement of the Returned income when the Assessee does not agree on certain additions, treatments and procedures.



WHY APPEAL

- Agreived of the order.
- Delay the payment of demand
- Delay the penalty
- Avoid the prosecution



STAGES IN INCOME TAX APPEAL

Commissioner Appeal

Income Tax Appellate Tribunal

Jurisdictional High Court

Supreme Court

TODAY'S COVERAGE -- First two levels where the Chartered Accountants are eligible to fight the cases.



AN ORDER AGAINST THE ASSESSEE

- where the assessee denies his liability to be assessed under this Act
- where the assessee denies an intimation under sub-section (1) or sub-section (1B) of section 143,
- where the assessee objects to the making of adjustments,
- the assessee objects to any order of assessment under sub-section (3) of section 143 (Regular Assessment) or section 144 (Best Judgement Assessment) ,
- the assessee objects to income assessed,
- the assessee objects to the amount of tax determined,
- the assessee objects to the amount of loss computed,
- the assessee objects to the status under which he is assessed;



APPEAL BEFORE COMMISSIONER OF APPEALS

- an order of assessment, re-assessment or re-computation under section 147(Income Escaping Asst) or section 150 (Appeal effect order);
- an order of assessment or reassessment under section 153A (Search or acquisition w.e.f.2003)
- an order made under section 154 (Rectification order) or section 155 (Effecting Other amendments)having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- an order made under section 163 treating the assessee as the agent of a non-resident;
- an order made under sub-section (2) or sub-section (3) of section 170; (Assessment of Successor)
- an order made under section 171 (Asst after partition of HUF)
- an order made under section 201 (Tax Deduction related Asst.)
- an order made under section 237 (Refund order)
- an order imposing a penalty under-section 221 (Default to pay tax); or section 271 (Assessment related penalties) , section 271A (Failure to maintain books) section, 271AAA / 271AAB (Penalty where search has been initiated), section 271FB, section 272AA (Failure to submit the information asked for) or section 272BB (Tax Collection at source);

APPEAL BEFORE COMMISSIONER OF APPEALS

- an order of assessment made by an Assessing Officer under clause (c) of section 158BC, (Block Assessment) in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;
- an order imposing a penalty under sub-section (2) of section 158BFA (Block Assessment)
- an order imposing a penalty under section 271B (Audit of Accounts) or section 271BB (Specified shares);
- an order made by a Deputy Commissioner imposing a penalty under section 271C (Penalty for failure to deduct tax at source), section 271CA (Penalty for failure to collect tax at source), section 271D (Penalty for failure to comply with the provisions of section 269SS) or section 271E (Penalty for failure to comply with the provisions of section 269T);
- an order imposing a penalty under Chapter XXI;
- an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of 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.

FORM OF APPEAL AND LIMITATION

- Every appeal under this Chapter shall be in the prescribed form (Form No 35) and shall be verified in the prescribed manner.

Assessed Income	Appeal Fees
Upto Rs. 1,00,000	Rs. 250
Rs. 1,00,001 to 2,00,000	Rs. 500
Rs. 2,00,001 and above	Rs. 1000
Matter not covered by Assessed income	Rs. 250



TIME LIMIT

The appeal shall be presented within thirty days of the

- where the appeal relates to any tax deducted under subsection (1) of section 195, the date of payment of the tax,
- where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty:
- where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded,
- in any other case, the date on which intimation of the order sought to be appealed against is served.



RELAXATION OF TIME LIMIT

The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.



DISQUALIFICATION TO FILE AN APPEAL

- where a return has been filed by the assessee, the assessee has NOT paid the tax due on the income returned by him;
- where no return has been filed by the assessee, the assessee has NOT paid an amount equal to the amount of advance tax which was payable by him:



RELAXATION OF DISQUALIFICATION TO FILE AN APPEAL

- On an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause



OTHER PROCEDURES

- Payment of demand
- Stay of demand
 - Currently stay is granted after payment of 15% of tax.
 - Boards instruction No. 1914 amended on 29/2/2016
 - Covered cases qualify for the 100% stay
 - Assessee can further approach PCIT for stay.
 - Intallments can be requested.
- Requesting to keep the penalty in abeyance.



PROCEDURE OF APPEAL

- Notice of hearing – To assessee and A.O.
- Right of hearing – Appellant , A.O. in person or their authorised representative
- Power of adjourn
- Power to enquiry – May make such inquiry himself before disposing of any appeal, or may direct the Assessing Officer to do so and report the result of the same to the CIT (Appeals)
- Additional grounds discretion of the CIT(A) – If satisfied that omission of such ground was not wilful or unreasonable
- Appeal order – In Writing, points for determination and reasons for decision
- Time limit to pass the order – Within 1 Year for appeal u/s 246A (1)
- Communication of order – To Assessee , Chief CIT/ CIT



E-FILING OF APPEAL

- Notification No.11/2016, F.No.149/150/2015-TPL
- For the assessee who is required to furnish return of income electronically, by furnishing the form electronically
 - i) Under digital signature, if the return of income is furnished under digital signature;
 - (ii) For Others by furnishing electronically through electronic verification code.
- For the assessee who has the option to furnish the return of income in paper form, by furnishing the form electronically as above or in paper form.
- (EVC) would verify the identity of the person furnishing the form and would be generated on the e-Filing website.
- Any document accompanying Form No. 35 shall be furnished in the manner as the said form is furnished.



E-FILING OF APPEAL

- Login to user account in Income Tax E-filing Website
- Go to menu -> e-File -> Prepare and Submit Online Form (Other than ITR)
- Fill the PAN, Select Form 35, Select the Assessment year for which appeal is to be filed
- Select the type of Digital Signature Certificate and get DSC registered on Income Tax Portal
- Verification is to be filled for the person whose DSC is registered .
- EVC Verification options is available for assessee who has not filed return using DSC.
- Attachments: Appeal Fee Challan , Order Copy, Copy of Notice of demand are mandatory



POWERS OF COMMISSIONER APPEALS

- 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 such order or vary it so as either to enhance or to reduce the penalty;
- In any other case, he may pass such orders in the appeal as he thinks fit.



ENHANCEMENT CAN NOT BE DONE WITHOUT GIVING OPPORTUNITY

- The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

DISCRETION TO CONSIDER ANY MATTER EVEN IF NOT RAISED

- In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.



GROUND OF APPEAL

- The issues raised by the Appeal should be classified into separate grounds when the same issue is contested by law as well as by facts of the case separate ground is suggested.
- End the grounds of appeal with a statement reserving the right to add or delete any grounds.

STATEMENT OF FACTS

- The contents of the statement of facts should contain the particulars about the assessee sufficient enough to understand the case.
- The general clause about the assessee sufficient enough to understand about the assessee's business and the grounds of appeal should be part of the preamble.
- Ground wise statement of facts should be then be submitted alongwith the citations of the case laws which are relied upon as a part of the paper book.
- End the statement of facts with a statement reserving the right to add or delete any statements of facts.

SUBMISSIONS

- The statement of facts shall be explained in detail alongwith the further developments in the case as submissions before the CIT (A)
- An Index of the evidences and records which are relied upon, alongwith the relevant records and evidences shall be made in the form of a book serially numbered.
- The copies of the citations which are relied upon should be the part of the paper book.
- Additional submissions and records shall be submitted as per the requirement of the case.



RESTRICTIONS ON PRODUCTION OF ADDITIONAL EVIDENCE

- The appellant shall not be entitled to produce before the Commissioner (Appeals) , any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer,



EXCEPTIONS

- where the Assessing Officer has refused to admit evidence which ought to have been admitted;
- where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer;
- where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal;
- 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.



EXCEPTIONS

No evidence shall be admitted the Commissioner (Appeals) records in writing the reasons for its admission.

The Commissioner (Appeals) shall not take into account any evidence produced unless the Assessing Officer has been allowed a reasonable opportunity-

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

The restrictions shall not effect the power of the Commissioner (Appeals) 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 Assessing Officer

PROCEDURE OF FILING APPEAL AND ANNEXURES

- The form of appeal, grounds of appeal and form of verification thereto shall be signed by a person person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.
- The memorandum of appeal, (in duplicate)
- Statement of facts (in duplicate)
- The grounds of appeal (in duplicate)
- Copy of the order appealed against (duly certified)
- The notice of demand in original, if any.
- Filed with the CIT (A) as mentioned in the Notice of Demand.
- The memorandum of appeal shall be accompanied by a fee
- The fee should be credited in a branch of the authorised bank or a branch of the State bank of India or a branch of the Reserve Bank of India after obtaining a challan from the Assessing officer and a copy of challan sent to the Commissioner of income-tax (Appeals).

INCOME TAX APPELLATE TRIBUNAL



APPEALABLE ORDERS


APPEAL BY ASSESSEE

- By Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:-
- an order passed by a Commissioner (Appeals)] under section 154, section 250, section 271, section 271A or section 272A;
- an order passed by a Commissioner under section 12AA or under section 263 or under section 271 or under section 272A
- an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A.

APPEAL BY THE DEPARTMENT

- The Commissioner may, if he objects to any order passed by a Commissioner (Appeals) under [section 154 or] section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

DUE DATE

- Every appeal shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be :
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BOARD'S INSTRUCTION No 5/2014 DATED 10.07.2014 CIRCULAR 21/2015

Appeal Authority	Monetary Limit
Tribunal	Rs.10,00,000
High Court	Rs.20,00,000
Supreme Court	Rs.25,00,000

- For this purpose, “tax effect” means
COMMISSIONER OF INCOME TAX vs. SURYA
HERBAL LTD.(2011) 243 CTR (SC) 327 Liberty
is given to the Department to move the High
Court pointing out that the Instruction No. 3 of
2011, dt. 9th Feb., 2011, should not be applied
ipso facto, particularly, when the matter has a
cascading effect.



CROSS OBJECTIONS



- The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified

RELAXATION OF DUE DATE

- The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.

APPEAL FEES (ITAT)

- An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, be accompanied by a fee of,-

Assessed Income	Appeal Fees
Upto Rs. 1,00,000	Rs. 500
Rs. 1,00,001 to 2,00,000	Rs. 1500
Rs. 2,00,001 and above	1% of the income subject to maximum Rs. 10000
Matter not covered by Assessed income	Rs. 500

Provided that no such fee shall be payable in the case of or a memorandum of cross-objections



IN CASE OF LOSS

- Gilbs Computer Ltd. vs. ITAT (317 ITR 159)(Bom)
- Filing Fee for appeal to ITAT in 'assessed loss' cases is only Rs. 500



STAY PETITION

- The assessee can move the stay petition before the ITAT immediately after filing the Appeal before the ITAT.
- The valid petition will be heard immediately and the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order.

STAY PETITION

- **Provided further** that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, 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; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:
- if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

STAY PETITION

- DHL EXPRESS (INDIA) (P) LTD. vs. ADDITIONAL COMMISSIONER OF INCOME TAX (2011) 140 TTJ (Mumbai)(UO) 38
- It is not mandatory on the part of the assessee to move application for stay before the lower authorities; assessee has a prima facie case but as assessee could not satisfactorily explain its financial hardship
- An application for stay of demand shall be accompanied by a fee of five hundred rupees.



CONSTITUTION OF APPELLATE TRIBUNAL

- The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit



JUDICIAL MEMBER

- 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 Indian Legal Service and has held a post in Grade [II] of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years.

ACCOUNTANT MEMBER

- 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 (38 of 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 Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

PRESIDENT AND VICE PRESIDENT

- The Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.
- The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.
- The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.]
- The Senior Vice-President or a Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

PROCEDURE

- 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.

TIME LIMIT FOR RECTIFICATION OF MISTAKE



- The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.



NO AMENDMENT OF ENHANCEMENT WITHOUT GIVING OPPORTUNITY

- An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

FEES FOR EFFECTING AMENDMENT


- Any application filed by the assessee in this regard shall be accompanied by a fee of fifty rupees.



TIME LIMIT FOR HEARING

- In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed

TIME LIMIT OF STAY PETITION HEARING

- where an order of stay is made in any proceedings relating to an appeal filed the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order.
 - Provided further that if such appeal is not so disposed of within the period specified in the first proviso, the stay order shall stand vacated after the expiry of the said period.
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COST OF APPEAL

- The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.

COMMUNICATION OF ORDER

- The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.



CONSTITUTION OF BENCHES

- The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.
- a Bench shall consist of one judicial member and one accountant member.



SINGLE MEMBER BENCH

- The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government 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 Assessing Officer in the case does not exceed five hundred thousand rupees.

PROCEDURE OF DECISION

- If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.
- Subject to the provisions of this Act, the Appellate Tribunal 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.

POWER OF APPELLATE TRIBUNAL

- The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).



REVISION OF OTHER ORDERS

POWER WITH THE COMMISSIONER

- The Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.


TIME LIMIT

- The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

TIME LIMIT FOR APPLICATION BY THE ASSESSEE

- In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier

POWER OF COMMISSIONER TO ADMIT

- the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.
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EXCLUSIONS

- The Commissioner shall not revise any order under this section in the following cases-where an appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal the assessee has not waived his right of appeal; or
- where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.



FEES FOR REVISION APPLICATION

- Every application by an assessee for revision under this section shall be accompanied by a fee of [five hundred] rupees.

TIME LIMIT TO DISPOSE APPLICATION

- On every application by an assessee for revision an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.



NO TIME LIMIT WHEN COVERED BY TRIBUNAL OR COURT ORDER

- An order in revision may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court



QUERIES



Thanks

