

APPEALS UNDER INCOME TAX

Organised by
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APPEALS

- 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 Assessment of the same by the Assessing Authorities.
- The appeals and revisions comes in to picture on the assessment of the Returned income when the Assessee does not agree on certain additions, treatments and procedures.

APPEALS

- Currently the Income tax appeals are contested in four stages:
 1. Commissioner Appeals,
 2. Income Tax Appellate Tribunal.
 3. In the Jurisdictional High Court
 4. In the Supreme Court.

- We are covering the first two levels where the Chartered Accountants are eligible to fight the cases.

APPEALS

- The Relevant sections of the Act are in the Chapter XX of the Income Tax 1961, starting from Section 246 .
- Appeal Before CIT (A) : Relevant Sections 246A to 251
- Appeal Before ITAT : Relevant Sections 252 to 255

APPEAL BEFORE CIT(A)

- an order against the assessee
 - where the assessee denies his liability to be assessed under this Act
 - where the assessee denies an intimation u/s 143(1) or 143(1B)
 - where the assessee objects to the making of adjustments,
 - the assessee objects to any order of assessment u/s 143(3) or 144 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 CIT(A)

- 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 170(2) or 170(3) (Assesment of Successor)

APPEAL BEFORE CIT(A)

- 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)
- order imposing a penalty under Chapter XXI;
- under-section 221(Default to pay tax); or
- section 271 (Assessment related penalties) ,
- section 271A (Failure to maintain books)
- section 271F (Failure to file Return),
- section 272AA (Failure to submit the information asked for)
or
- section 272BB (Tax Collection at source);
- an order imposing a penalty under section 271B (Audit of Accounts) or
- section 271BB (Specified shares);

APPEAL BEFORE CIT(A)

- 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)
- Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the [* * *] [Commissioner (Appeals)] to be declared not liable to make such deduction.

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 100000	Rs.250
100001 to 200000	Rs.500
200001 and above	Rs.1000
Matter not covered by Assessed income	Rs.250

TIME LIMIT

- The appeal shall be presented within thirty days of the :
 - a) where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax,
 - b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty,
 - c) 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,
 - d) 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

PROCEDURE OF APPEAL

- **NOTICE OF HEARING** : Should be sent to both the parties fixing the date and place
- **RIGHT OF HEARING** : Both parties can either appear in person or through AR
- **POWER OF ADJOURN** : Power to adjourn from time to time
- **POWER TO INQUIRY** : Before disposing an appeal
 - May make further inquiry
 - May direct AO to make further inquiry and report the result

PROCEDURE OF APPEAL

- **ADDITIONAL GROUNDS DESCRETION OF THE CIT(A)**
May allow additional ground if found that the omission of the same from form 35 was not wilfull and unreasonable
- **APPEAL ORDER** : shall be made in writing and giving reasons for the decision
- **TIME LIMIT TO PASS THE ORDER** : Shall dispose the appeal within one year from the end of the financial year in which such appeal is filed, wherever possible
- **COMMUNICATION OF ORDER** : communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner

POWERS OF CIT (A)

- confirm, reduce, enhance or annul the assessment
- In respect of penalty, confirm or cancel 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.

POWERS OF CIT (A)

- **ENHANCEMENT CAN NOT BE DONE WITHOUT GIVING OPPORTUNITY** : the appellant should be given a reasonable opportunity of showing cause against enhancement or reduction.
- **DESCRETION TO CONSIDER ANY MATTER EVEN IF NOT RAISED** : 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.

GROUNDINGS 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, along with 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,

RESTRICTIONS ON PRODUCTION OF ADDITIONAL EVIDENCE

- 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.

RESTRICTIONS ON PRODUCTION OF ADDITIONAL EVIDENCE

- No evidence shall be admitted unless it records in writing the reasons for its admission.
- shall not take into account any evidence produced unless the AO 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 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
- Appropriate challan should be attached



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.

APPEALABLE ORDERS

- 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 :

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.

- **FEES FOR STAY PETITION**


An application for stay of demand shall be accompanied by a fee of five hundred rupees.

APPEAL FEES

- 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 100000	Rs.500
100001 to 200000	Rs.1500
200001 and above	1% of income subject to a maximum of 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

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- **CONSTITUTION OF APPELLATE TRIBUNAL**
 - **JUDICIAL MEMBER**
 - **ACCOUNTANT MEMBER**
 - **PRESIDENT AND VICE PRESIDENT**

 - **PROCEDURE** : Shall pass order after granting opportunities to be heard to both the parties

 - **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**

unless the Appellate Tribunal has granted reasonable opportunity to the assessee to be 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**

Shall hear and decide appeal within four year from the end of the financial year in which appeal is filed, wherever possible.



- **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.



- **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**

Can hear and decide appeal which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed Fifteen hundred thousand rupees.

- **PROCEDURE OF DECISION**

In case of difference of opinion on any point, the point shall be decided according to the majority

In case of equality of members with different opinion then same shall be referred to one or more members for hearing on such points and then the point shall be decided according to the opinion of the others members including the members who first heard the case.



POWER OF APPELLATE TRIBUNAL

- 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).



- **PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE TRIBUNAL**

- The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal,

- **Exceptions:**

- requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or ,
- if the IT authorities have decided without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them,
- Then the Tribunal, for reasons to be recorded, may allow such may allow such evidence to be adduced.

APPEAL AND STAY

- Filing of appeal does not automatically renders stay on demand.
- Application should be made before the AO.
- AO can under the circumstances grant stay , partial stay or installment facility
- The discretion conferred on the AO u/s. 220(6) is not a naked and arbitrary power *Mahalingam Chettiar (MLM) vs ITO (1967) 66 ITR 287 (Mad.)*
- CIT has power to interfere and grant due relief to the assessee

STAY PETITION BEFORE CIT(A)

- Where an appeal has been filed to CIT(A) and the same is pending, one of the questions that arises is whether a stay petition could be filed to CIT(A).
- Although the Act is silent on CIT(A)'s power to grant stay from the recovery of demand,
- the Courts in a number of decisions have held that such power does exist in view of the inherent powers available and in the absence of any exclusionary provision in that direction.
- However, such powers can be exercised only if it is considered not only necessary but expedient for effective adjudication of appeal (*Bongaigaon Refinery and Petrochemicals Ltd v. CIT*, 239 ITR 871 (Gau.) and *Prem Prakash Tripathi v. CIT*, 208 ITR 461 (All.))
- **STAY PETITION BEFORE ITAT : After filing of appeal at ITAT stay petition can be filed**

APPEAL AND PENALTY

- Abeyance is granted till the disposal of appeal by the CIT (A) where the related assessment order is a subject matter of appeal. (Section 275)
- Penalty order shall be passed within one year from the end of the FY in which the order of CIT (A) is received

ISSUES IN APPEAL:

- Delayed Filing of Appeal:
- Mistake in Appeal Order – Remedies
- Additional Evidence
- Additional ground
- Payment of taxes

Delayed Filing of Appeal:

When the appeal are not filed in time the appellate authorities have the power to condone the delay.

- **CONDONATION OF DELAY FOR LATE FILING BEFORE CIT (A) SECTION 249 (3)** : 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.
- **CONDONATION OF DELAY FOR LATE FILING OF APPEAL OR CROSS OBJECTION SECTION 253 (5)**: The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was **sufficient cause** for not presenting it within that period.

SUFFICIENT CAUSE

- What as to constitutes Sufficient cause is not defined anywhere.
- Various courts have held that Sufficient cause should be interpreted in a liberal way.
- And the delay in filing of appeal should be condoned if reasonable cause is proved by the appellant and the same should be **bonafide** and should not have occurred due to **negligence**.

JUDICIAL ANALYSIS

- What as to constitutes Sufficient cause is not defined anywhere.
- Various courts have held that Sufficient cause should be interpreted in a liberal way.
- And the delay in filing of appeal should be condoned if reasonable cause is proved by the appellant and the same should be bonafide and should not have occurred due to negligence.

JUDICIAL ANALYSIS

Particulars	Citation
Sufficient cause should be interpreted in a liberal sense	<i>COLLECTOR, LAND ACQUISITION Vs. MST. KATIJI & ORS</i>
Mistake of the Counsel	<i>Concord Of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi & Ors. (1979) 118 Itr 507 (Sc)</i>
No general rule depends on case to case	<i>In State Of Kerala Vs. E.K. Kuriyipe & Ors. (1981) Suppl. SCC 72</i>
Refusal to condone the delay would cause grave injustice	<i>O.P. Kathpalia Vs. Kashmir Singh & Ors. AIR 1984 SC 1744</i>
Delayed legal opinion	<i>BHARAT AUTO CENTER Vs. COMMISSIONER OF INCOME TAX HIGH COURT OF ALLAHABAD (2006) 200 CTR (All) 289</i>

JUDICIAL ANALYSIS

Particulars	Citation
Proceedings In Writ/Wrong Forum	<i>Madras High Court In CIT Vs. K.S.P. Shanmugavel Nadar (1985) 46 CTR (Mad) 157</i>
Seeking Alternative Remedies	<i>Madura Coats Ltd. Vs. Collector Of Central Excise (1994) 119 CTR (SC) 63</i>
Medical Reasons Good Reason For Sufficient Cause :	<i>Orbitel Communication (P) Ltd. Vs. Income Tax Officer Itat, Delhi 'G' Bench (2007) 107 Ttj (Del) 112</i>

MISTAKE IN APPEAL ORDER – REMEDIES

- **MISTAKE APPARENT ON RECORD IN THE ORDER OF CIT (A) :**

CIT (A) can rectify its mistake apparent on record when the same is been brought to its notice by the assessee or the AO. Time limit is four years from the end of the Financial year in which order sought to be amended was passed.

- **MISTAKE IN ORDER OF ITAT SECTION 254(2):**

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 under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer :

Time limit is four years from the date of the order.

MISTAKE IN APPEAL ORDER – REMEDIES

- Rule 34A of Income-tax (Appellate Tribunal) Rules, 1963 deals with application of rectification before the tribunal :
- The following are the requirements to be satisfied before an MA is filed.
- Application should be made in triplicate.
- Should state clearly and concisely state the mistake apparent from the record of which the rectification is sought.
- Details of previous MA filed if any and its outcome
- Fees of Rs. 50
- Order in writing giving reasons

INSTANCES WHEN CAN AN MISCELLANEOUS APPLICATION BE FILED :

- An Ex parte order is passed due to non attendance
- Failure to consider preliminary objection or deal with a ground of appeal
- Failure to consider alternative argument
- Failure to consider material on record
- Order based on erroneous assumptions
- Order based on a decision subsequently reversed
- Non-consideration of relevant provision of law .
- Decisions not cited referred to in order or decision cited not dealt with

ADDITIONAL EVIDENCE

Care to be taken regarding additional evidences

- File Maximum evidences before the AO and seek time if an evidence is called for and cannot be produced
- Back up copy of all the evidences filed
- Any additional evidence should be filed with application under Rule 46A explaining reasons for not filing before the AO
- Should be filed in duplicate
- If additional evidence is as per direction of CIT (A) then the fact shall be clearly mentioned

REMAND PROCEEDINGS

CIT (A) may sought remand report from AO in following circumstances:

- An additional evidence is brought on record
- where the interest of justice so requires
- where the submission made before the Assessing Officer are defective and the appellant pleads that it be given an opportunity to correct it
- when the Assessing Officer has omitted to record a specific finding on a material issue;
- When the findings of the Assessing Officer are not sufficiently specific or lack precision.

ADDITIONAL GROUND

- **Appellate authority has powers to admit additional grounds :**
 - Only if omission was not wilful or unreasonable.
 - Even if not raised before the AO
 - If it is on the basis of a later judicial pronouncement
 - Ground challenging jurisdiction of AO
- **Payment of Taxes before filing of appeal :**
 - If return of income is filed – SA tax has to be paid before the admission of appeal (No remedy against operation this clause)
 - If no return of income is filed – then an amount equal to advance tax payable (can be waived by CIT (A) on application for any good and sufficient reason

Questions





THANKS

Disclaimer:- The opinion and views expressed in this compilation are those of the compiler. J.B. Nagar CPE Study Circle does not necessarily concur with the same. While every care is taken to ensure the accuracy of the contents of this compilation, neither the compiler nor the J.B. Nagar CPE Study Circle are liable for any inadvertent errors.

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