

J B NAGAR CPE STDY CIRCLE OF WIRC

Study Group Meeting

Compilation by:

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**“ Preparation of Appeal & Recent Amendment under
IT Act 1961”**

Day & Date: Saturday, 12th January 2019

Why Preparation Of Appeal Under Income Tax Act 1961?

Assessment orders for Assessment Year 2016-2017 are in the hands of the Assessee as they have been Completed on or before 31st December,2018 U/s 143(3) OR U/s 144 And where the Assessee is aggrieved by the said order has a right to File An Appeal Before CIT(A) Under whose jurisdiction Assessee is falling, to seek appropriate remedy under Law.

Under the current e filing of Appeals before CIT(A), Assessee has the option to select to CIT(A) out side his own jurisdiction under specific circumstance.

Which Orders can be appealed against?

'246A. Appealable orders before Commissioner (Appeals).—(1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

- (a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;**
- (b) an order of assessment, re-assessment or re-computation under section 147 or section 150;**
- (c) An order made under section 154 or section 155 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;**
- (d) An order made under section 163 treating the assessee as the agent of a non-resident;**
- (e) An order made under sub-section (2) or sub-section (3) of section 170;**
- (f) An order made under section 171;**

- (g) an order made under clause (B) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;**
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;**
- (i) an order made under section 237;**
- (j) an order imposing a penalty under—**
 - (A) Section 221; or**
 - (B) Section 271, section 271A, section 271F, section 272AA or section 272BB;**
 - (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;**
- (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, 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;**
- (l) an order imposing a penalty under sub-section (2) of section 158BFA;**
- (m) an order imposing penalty under section 271B or section 271BB;**
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;**
- (o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;**
- (p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;**

- (q) an order imposing a penalty under Chapter XXI;**
- (r) 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 classes of person, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.**

***Explanation*—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.**

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

***Explanation.*—For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.'**

A: Right to Appeal ?

Whenever an Assessee under the Income Tax Act. 1961, is Aggrieved by and Order passed under this Act, he is entitled to file an Appeal before CIA(A), as a matter of process of law as provided in the statute. In law, an appeal is the process in which cases are reviewed, where parties request a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarifying and interpreting law.

B: Should you file a Appeal At all?

- 1. Whether there is a reason sufficient for filing Appeal?**
- 2. Avoid filing frivolous appeals.**
- 3. Appeal against Assessment Orders.**
- 4. Separate Appeal has to be preferred against Penalty Orders.**

C: Jurisdiction of CIT(A)

When the Assessee Login on the Income Tax Website and proceeds to prepare Form No 35 , the applicable **Jurisdiction of CIT(A)** pops up on its own, which has to be in agreement with Jurisdiction communicated in Demand Notice U/s 156.

Here it is important to note that if it is not in agreement, check with the AO before filing.

Further the Assessee has been allowed to file the appeal with CIT(A) other than the above , where he has a reason , say he has Geographically relocated etc.

D: Limitation , The Appeal has to filed within 30 Days.

- 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 the appeal relates to any tax deducted under subsection (1) of section 195, the date of payment of the tax,
- 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.

E: Application for condonation, if delay

- Separate application for condonation of delay has to be filed with CIA(A), where there is delay in filing of Appeal and 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.

F: Whether authority passing the order had jurisdiction to pass the order.

Any order passed by Income Tax Authority which is not in his Jurisdiction / Authority , then , in Appeal this has to be taken as a separate ground of appeal , for declaring order as null and void by CIT (A)

G: -Whether order was passed within limitation.

The Law provides for the time frame within which an order has to be passed, and any order passed beyond the said time limit, then in Appeal this has to be taken as ground of appeal, and the order may be declared null and void by CIT (A)

H: Check computation of total income, tax and interest – rectification and appeal:

Ascertain the correctness of Computation of Total Income, Income Tax and Interest Charged thereon. If an error is noted, file a rectification with AO, also cover the same in Grounds Of Appeal.

I: If any claim had remained to be raised – fresh plea

As appeal proceedings are continuation of assessment proceedings, assessee can in appeal for the first time make a claim, which was not raised even before the assessing officer, if the facts relevant are on record. Such a claim is possible for the first time even before the Income Tax Appellate Tribunal. {CIT v Kanpur Coal Syndicate (1964) 53 ITR 225 (SC); CIT v Jute Corporation, 187 ITR 688; National Thermal Power Co. Ltd. v CIT (1998) 229 ITR 383 (SC); Ahmedabad Electricity Co. Ltd. v CIT 199 ITR 351 (Bom) (FB)}.

J: Widest possible ground

Grounds of appeal – Section wise. (Each ground should not exceed 100 words)e filing format

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.

K: Alternative plea, without prejudice grounds

When two views are possible under the law and say the one is not in accordance with the relief sought by you, you should raise the alternative plea, by stating, *without prejudice*.

Eg: Capital Gains are being treated as business income , then you will be entitled to expenses depreciation etc., or say Income from House property is being treated as Business Income than too you will be entitled to claim those expenses.

Depending on the facts of ever case this point will have to be attended to.

L: Grounds should not be argumentative

Grounds should be brief, precise, complete and to the point and should not be argumentative.

Suggested guidelines for Grounds of Appeal and Statement of Facts is given below.

Always End the grounds of appeal with a statement reserving the right to add or delete any grounds.

M: Statement of facts

Statement of Facts (up to 1000 words - fill in the form itself, exceeding 1000 words – attach separate document where required)

Approach in Drafting the Submissions for an Income Tax Appeals

An attempt has been made to give a practical approach to drafting submissions the income tax appeals before the Commissioner of Income Tax (Appeals) so as to fine tune the income tax appeal. The Statement of facts should be in the same order as Grounds of Appeal.

- First develop an interest and enthusiasm for the appeal which he is going to prepare and argue for his client whether it is before the first appellate authority i.e. CIT (A). If you yourself do not believe in success of the appeal the entire exercise and purpose of filing appeal may get defeated and this will also reflect in poor drafting.
- It is very important to be meticulous with full details of the matter in Appeal even a minor detail should not be left out, be it related to facts or law. One has to be absolutely sure and clear in his mind as to what sort of submissions were made before the assessing officer, which documents were filed before him, what were his objections, whether he considered those submissions and documentary evidence filed before him etc. irrespective of the fact whether or not the person who is preparing the Appeal was associated with assessment proceedings.

- **Collect all documentary at once place evidence relating to appeal on which you would want to rely. See whether these documents were filed before the AO at the assessment stage or not. If not then you may have to file an application for additional evidence. Prepare a paper book of documents relied upon. Give index and page numbering to paper book.**
- **While drafting take each ground one by one. Before starting drafting have a thorough reading of assessment order to get a grasp of the case and grounds made therein. If necessary, jot down the points which come in your mind while going through the assessment order and grounds of appeal.**
- **Divide your drafting in three parts: Facts in brief: Here, narrate brief facts of the case under appeal relating to each ground separately. This will give an idea to the appellate authority of the matter and the proceedings that has already taken place.**
- **AO's arguments: Here narrate in brief AO's major arguments relating to each ground /addition. Preferably use points or bullets as it gives a bird's eye view, looks pleasing and facilitates easy understanding. Do not use lengthy paragraphs and also do not commit mistake of repeating the whole assessment order.**
- **Submissions: this is the most important part. Draft submissions carefully by stating your arguments one by one. Divide the whole submissions in short paragraphs and also refer to documentary evidences filed separately in submissions wherever necessary with page numbers. Put your best arguments/plea first. Depending upon the issue in hand, you may have to decide which would come first, fact or law. In other words if you feel that the issue in hand is more strong on law rather than on facts, you may insist on law aspect more than the facts but if you feel that issue in hand pertains more to facts than to law, you may proceed accordingly.**

- Submissions made before AO in course of Assessment Proceedings should be attached with the appeal memorandum.
- While mentioning facts of the case, make sure to be precise yet short. That is to say, be crisp, short and precise without forgetting to mention a vital fact relating to the case/issue.
- Depending upon the issues, you may have to rely on some supporting case laws in your favor to drive home the point. In which case care must be taken to ensure that the case laws cited pertain to the issue in hand, in your favor and most importantly, not have been overruled or set aside by a subsequent judgment. Thus in this regard thorough research is required to be made. Any slip up in this connection will lend you in trouble before the appellate authority particularly the ITAT since their members are very well versed with the case laws. In this respect it is important to keep one self-updated on the latest in tax laws. It is always better to mention more recent case laws.
- If necessary engage a expert in the matter.

N: Who has to file and sign the appeal

- **DIGITAL VERIFICATION** The form shall be verified by the person in accordance with the provision of Rule 45 (2) .i.e. by the person who is authorized to sign the ROI u/s 140 of the I.T. Act :
- Individual – Himself, Authorized Representative.
- HUF – Karta or any adult member.
- Firm – Managing partner/any partner/any other partner
- Company – Managing director
- LLP – Designated partner
- Local authority – Principal officer
- Political party – Executive officer of such party
- AOP/BOI – Any member

- **DIGITAL VERIFICATION Form 35** can be digitally verified in either of the following ways :
- **DSC registered on the portal – Through DSC (Digital Signature Certificate).**
- **DSC not registered on the portal –**
 - Through Adhaar OTP i.e. Verification code will be sent on the mobile no. registered with UIDAI.**
 - Though EVC (Electronic verification code) i.e. Verification code will be sent on the mobile no. registered with the Bank account, whose details are given.**

O: Application for stay

As per Sec. 220, the Assessee has to make the payment raised through Notice of Demand u/s 156, within 30 days.

Earlier 15% of the demand raised was required to be paid by the Assessee, in case of filing of CIT Appeal. However vide Office Memorandum [F. No. 404/72/93-ITCC] dated 31.07.2017, the limit has been revised to 20% of the disputed demand. →

In practice, it is advisable to make application to the Assessing Officer & CIT(A) simultaneously to stay the recovery proceedings. Option to reject or stay the proceedings depending upon circumstances.

P: Appeal Fees

Schedule of Appeal Fees

Particulars	Fees for filing appeal before CIT (A)	Fees for filing appeal before I.T.A.T
Assessed Total Income is Rs. 1 lakh or less	Rs. 250	Rs. 500
Assessed Total Income is more than Rs. 1 lakh but not more than Rs. 2 lakhs	Rs. 500	Rs. 1,500

Assessed Total Income is more than Rs. 2 lakhs	Rs. 1000	1% of Assessed Income subject to a maximum of Rs. 10,000
Where subject matter is not covered under any of above	Rs. 250	Rs. 500
Miscellaneous application u/s 254(2)	—	Rs. 50
Stay Petition	—	Rs. 500

How to Fill Income Tax Appeal Challan?

An Appeal can be filed only after Appeal Fee is paid. So, one should take care of the following points while making the payment of appeal fee and filling the proper challan as that fee can't be adjusted against tax payment:

1. The challan form to be used is Challan No. 280.
2. If the Appeal is for more than one year, Appeal Fees has to be paid for each year through a separate challan.
3. Write Correct Permanent Account Number (PAN)
4. For depositing the Appeal Fees in case of Non Corporate and Corporate Assessee, Major Head 020 or 021 is to be selected.
5. Under 'Type of Payment', Minor Head Self-Assessment Tax (300) has to be selected.
6. Under 'Details of Payments', the amount has to be entered in the "Others" column.
7. Do not use Challan 280 for depositing TDS.

Q: DOCUMENTS TO BE ATTACHED

- Assessment Order
- Notice of Demand
- Statement of Facts
- Grounds of Appeal
- Payment challan of Appeal filing fees
- Affidavit in case of delay.
- Letter of Authority
- Documents in support of Ground
- Case laws in support of Grounds

R: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.

S: 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:

T 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

U:OTHER PROCEDURES

- Payment of demand
- Stay of demand
- currently stay is granted after payment of 20% of tax.

- **SECTION 220 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT - RECOVERY OF OUTSTANDING TAX DEMANDS - PARTIAL MODIFICATION OF INSTRUCTION NO.1914, DATED 21-3-1996 TO PROVIDE FOR GUIDELINES FOR STAY OF DEMAND AT FIRST APPEAL STAGE**
- **OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 31-7-2017**
- Covered cases qualify for the 100% stay
- Assessee can further approach PCIT for stay.
- Installments can be requested.
- Requesting to keep the penalty in abeyance.

V: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.

W: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 affect 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

X:PROCEDURE OF FILING APPEAL AND ANNEXURES(Manual)

- The form of appeal, grounds of appeal and form of verification thereto shall be signed by a 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).

Y: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

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Z: Notification for E-FILING OF APPEAL

- 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.

Steps 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

Appeals before ITAT

CBDT INSTRUCTION NO. 3/2018 Dt. 11.07.18 Department Appeals shall not be filed in cases where the tax effect does not exceed effect does not exceed the monetary limits given as under:

Appeals in Income-tax matters (in Rs.)	Monetary Limit
Before Appellate Tribunal	20,00,000/-
U/s 260A before High Court	50,00,000/-
Before Supreme Court	1,00,00,000/-

The same shall also apply to pending Appeals. However, filing of appeal has to be decided strictly on merits.

Orders of the CIT(A)s are not final. Remedy of filing appeal before ITAT lies with both the tax payers and the Income Tax Department. Where the Income Tax Department is aggrieved by an order of CIT(A), they should consider approaching the ITAT rather than issuing instructions and policies which prejudice the independence of the office of CIT(A).

The New form No 36, for filing appeal before ITAT has been prescribed vide CBDT Notification Dt: 23/10/2018

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 23rd October, 2018

G.S.R 1054(E).—In exercise of the powers conferred by section 253 read with section 295 of the

Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules

further to amend the Income-tax Rules, 1962, namely:-

1. **Short title and commencement.**—(1) These rules may be called the Income-tax (**10th Amendment**)

Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, ___

“(i) in rule 47, in sub-rule (1) and sub-rule (2), for the words, brackets and figure “sub-rule (2)”, the words,

brackets and figure “sub-rule (3)” shall respectively be substituted;

(ii) in Appendix II, ___

(a) for Form 36 and notes thereto, the following shall be substituted, namely:

Salient features of the Notification

1. Detailed information about the Appellant’s and Respondent’s personal information including mobile no. and email-id are to be furnished.

2. Details of total amount of addition or disallowance made, penalty and other amount in the order, and amount / penalty disputed in appeal is to be given in Form 36 and Form 36A.

3. Major change in Form 36 and Form 36A is to give ‘Tax effect relating to each ground of appeal’. The information should help all stake holders to focus on the ground of

appeal where the tax effect is maximum, and pay attention to the ground of appeals based on the tax effect

4. To have uniformity in computing 'Tax effect' for each ground, detailed guidelines is given for different scenario, which are summarised below

a. Tax effect will be tax including surcharge and cess but excluding interest and penalty on disputed amount.

b. In case of loss, notional tax, as stated above, on change of loss amount.

c. If dispute relates to interest and/or penalty amount, difference in interest and/or penalty amount. d. In case of tax on book profit under section 115B or section 115JC of the Act, tax effect will be sum of tax effect under normal provisions and tax effect under section 115JB or section 115JC of the Act, as computed under sub-clause (a) above.

5. It now also needs to be separately mentioned as to whether there is any delay in filing of the forms.

New ground can be raised before ITAT →

Assessee can raise a new ground before the ITAT even if the same is not raised before CIT(A). ♣ National Thermal Power Co. Ltd. , 157 CTR 249(SC) →

An Assessee is entitled to raise before appellate authorities additional grounds in terms of additional claims not made in return filed by it. Pruthvi Brokers & Shareholders 23 taxmann 23 (Bom.) Indian Bank 55 taxmann taxmann 372 (Mad)

*Thank
you* 



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