

Presentation on:

Appeals before CIT (A)
&
Income Tax Appellate Tribunal

Organized by
The Hyderabad Branch of
SIRC of ICAI

On 16th Dec, 2022

Speaker-
K. A. Sai Prasad, FCA.

ORIGIN OF APPEALS

- ITR / SEC. 148
- 143(3) , 143(2)
- Assessment Proceedings
- Submissions
- Order U/s 143(3)...etc,



**Appeals before
Commissioner of Income Tax (A)
&
Income Tax Appellate Tribunal**



Contents

APPEALS BEFORE COMMISSIONER OF INCOME TAX (A)

- Appealable Orders
- Study Of Order
- Time Limit
- Prepration of Form-35
- Statement of Facts
- Grounds of Appeal
- Power of Attorney
- Fees: Sec. 249(1)(i)
- Written Submissions
- Additional Evidence
- Paper Book
- Representation
- General



Contents

APPEALS BEFORE INCOME TAX APPELATE TRIBUNAL (SECOND APPEAL)

- Appealable Orders
- Appeal Memo In Form-36
- Representation
- General
- Time Limit
- Constitution of Bench
- Fees





***APPEALS BEFORE
COMMISSIONER OF INCOME TAX (APPEALS)***



APPELLABLE ORDERS
SECTION - 246A

**Verify whether orders can
be appealed as per sec.
246A**



STUDY OF ORDER U/S 143(3)

Technical

- Show Cause Notice
- Subject
- Notices.. Etc.,

Facts

- Whether order is based on wrong appreciation of facts.

Legal

- Legal Issues
- Disputable issues
- Assessment on dead person

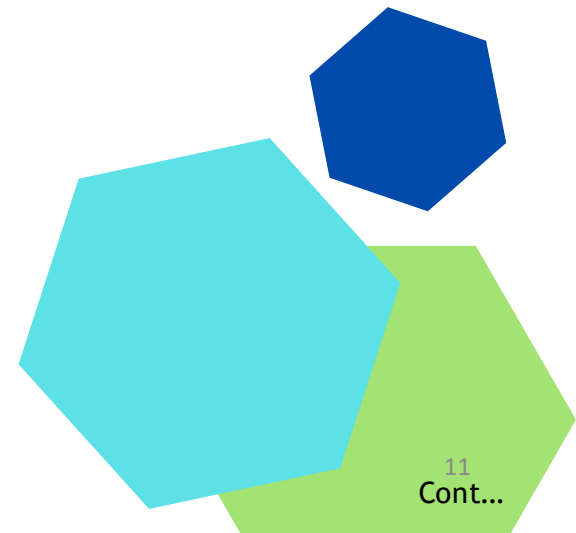
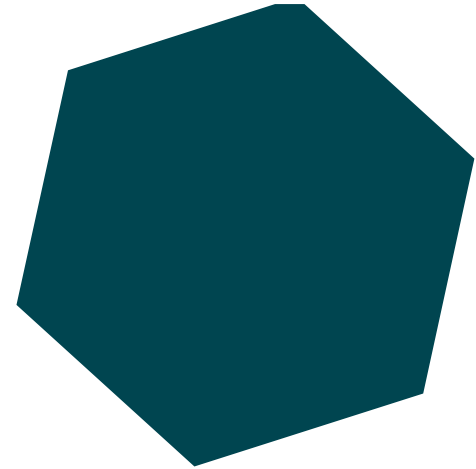
TIME LIMIT

- Appeal has to be filed within 30 days from the date of Order
- If there is any delay-
Petition for Condonation
has to be filed



PREPARATION OF FORM. NO. 35

- Address
- Verification as per ITR sec-140
- E-mail id for communication (got to be constantly vigilant)
- Legal Heirs
- Signing of Form -35



STATEMENT OF FACTS

- Explain your grievance briefly addition/ issue wise
- E-filing-need not be restricted- attachments
- Only facts no Arguments
- Make out a prima facie case





GROUNDS OF APPEAL

- Avoid General Grounds (Except first & last grounds)
- Specific Ground necessary
- Not Elaborative/should be precise
- Avoid reference to case laws

POWER OF ATTORNEY

- Should be on Non-Judicial Bond Paper/Franking
 - Better to file Power of Attorney



FEES - Sec. 249 (1)

S.No	Demand in Rs	Amount
1	Upto 1 lakh	Rs.250/-
2	1 lakh to 2 lakh	Rs.500/-
3	Greater than 2 lakh	Rs.1000/-
4	Others (including Penalties)	Rs.250/-

***Ensure that fees for appeal is paid under the appropriate head and sub head**

WRITTEN SUBMISSIONS



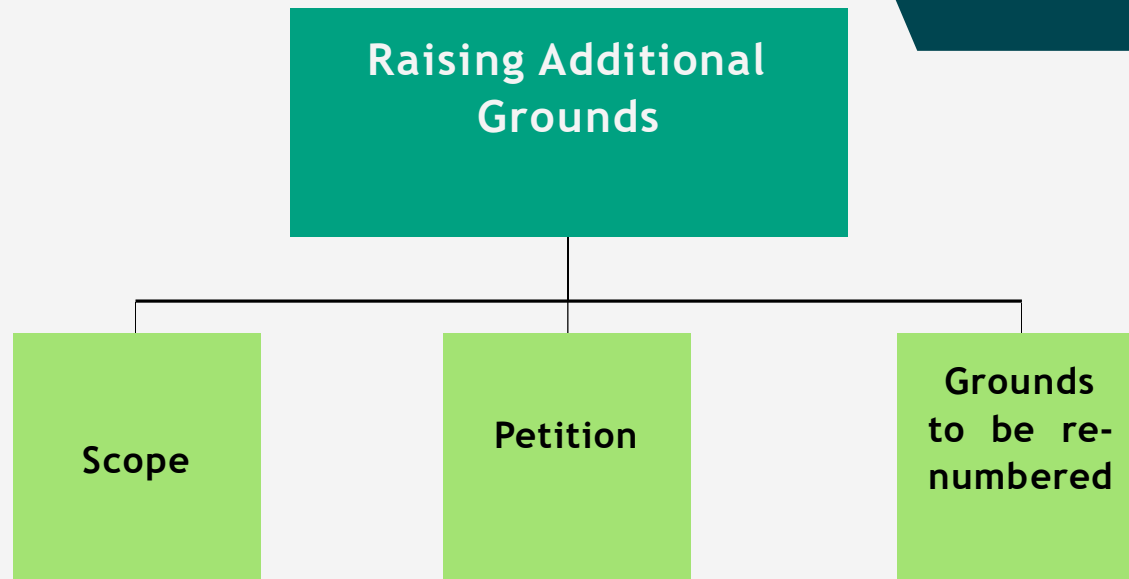
- Frist- Brief Facts of the case
Can be exhaustive-issue wise
- If Paper Book is filed- mention about it in the initial paragraphs
- Cover all issues

WRITTEN SUBMISSIONS

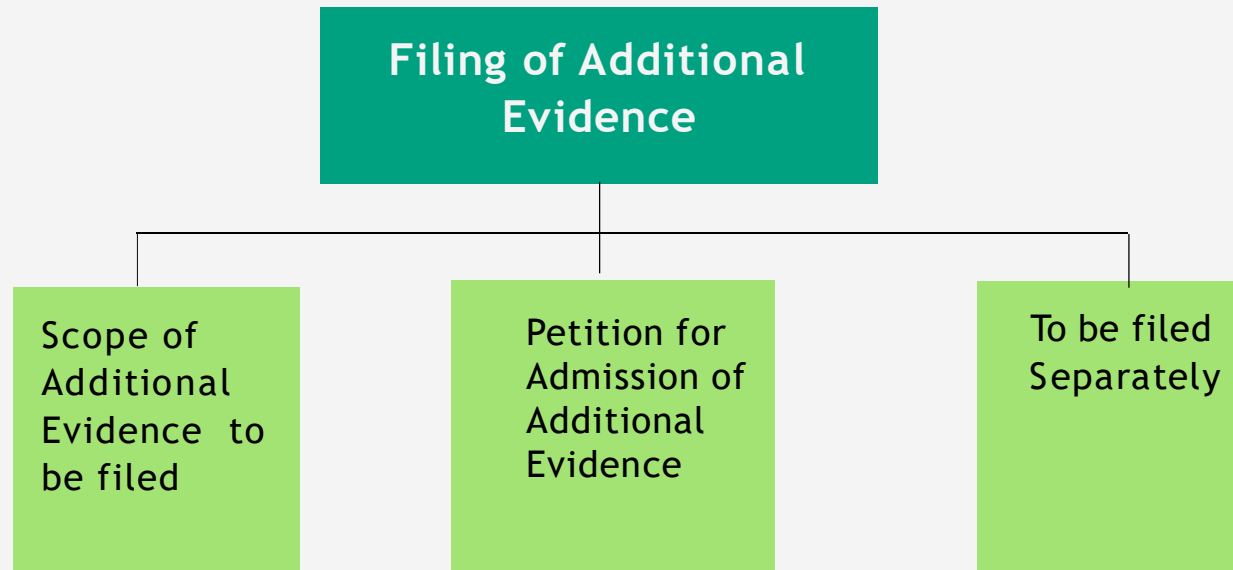


- Case Laws- always better to extract the relevant portion from body of the order and not just head notes
- Need not refer to numerous case laws
- Summary- Bullet Points on relief prayed

Additional Ground



Additional Evidence



Paper Book



Index

Care to consult Original Auditor regarding fresh material or not.

Page Numbering - Continuous even if more than one paper book filed

Always Prefer separate paper book for case laws

Indicate the status of filing before AO/CIT

Certification

Cont...

Representation before CIT(A)

- No more physical representations
- Virtual Hearing
- Physical Hearing - Very few Cases



GENERAL :

- **Tax Payment on income returned is a pre-condition, otherwise it is a defective appeal**
- **Appeal not filed within the due date, sometimes treated as defective appeal and penalties are not kept in abeyance.**
- **E-Filing from 01-03-2016**
- **Procedure and Powers of CIT(A) Sec-250 and 251**



***APPEALS BEFORE
INCOME TAX APPELATE TRIBUNAL (ITAT)
[SECOND APPEAL]***



TIME LIMIT:

- Appeal has to be filed within 60 days from the date of Order
- If there is any delay-
Petition for Condonation
of Delay



APPELLABLE ORDERS

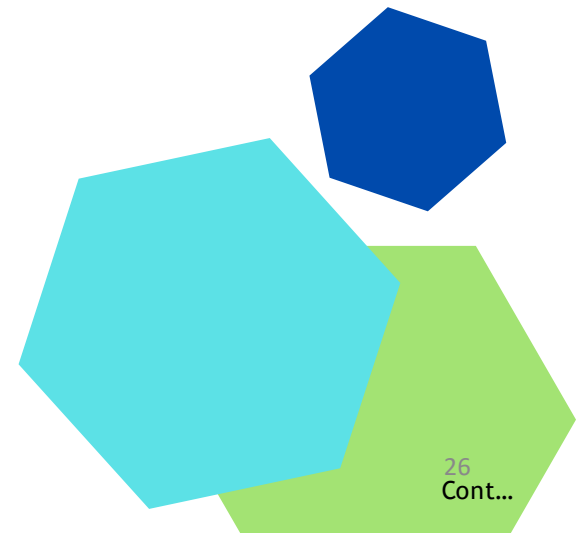
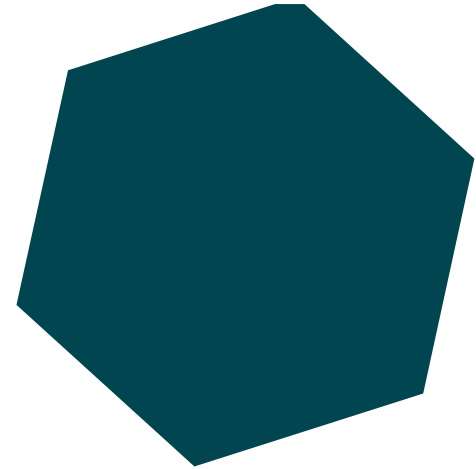
SECTION - 253

- Against orders passed by CIT(A)
- Sec-263, 144C(13)-DRP,12A,270,271 etc...
- Appeal against order u/ s 270A can be filed before ITAT only.
- Assessee & Department can be appellant



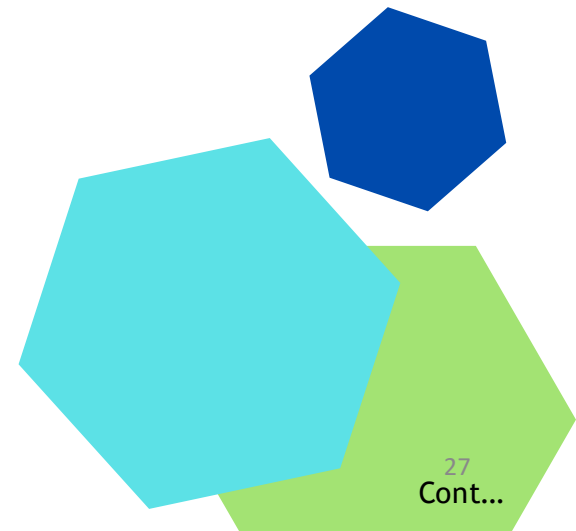
APPEAL MEMO IN FORM-36

- Only grounds of appeal in second appeal
- As per latest Form-36, ground wise tax effect has to be indicated.
- Verification as per section 140



CONSTITUTION OF BENCH

- Judicial Member and Accountant Member
- Third Member
- Special Bench
- SMC Bench, if income assessed is less than Rs.50 Lakhs



REPRESENTATION

- Have to observe the proceedings initially atleast for few days
- Dress Code
- Address the bench
- Paper Books -7 days in advance
- Written submissions - optional
- Order of arguments: appellant - respondent - reply(appellant)



REPRESENTATION

- Always go ground wise
- Facts from assessment orders, CIAT(A) orders
- Submissions- before AO / CIT(A)
- Case Laws can be filed on the day of hearing
- Do not interrupt the bench query



REPRESENTATION

- Do not address "DR"
- Do not seek adjournment in the middle of the arguments.
- Adjournment letters and communications with DR's not to be taken for granted but try to communicate the adjournment to other side in advance



REPRESENTATION

- Stay conditions
- Miscellaneous application conditions
- Mobile phone in silent-mode



FEES :

S.No.	Particulars	Amount
1	Upto 1 Lakh	Rs.500/-
2	1 Lakh to 2 Lakhs	Rs.1500/-
3	Greater than 2 Lakhs	Rs.10,000 or 1% of Income Assessed
4	Miscellaneous Applications	Rs.50/-
5	Others (Including Penalties)	Rs.500/-

- No Fees to be paid by department
- Department appeals are governed by monetary limits with exceptions

GENERAL :

Cause Title

Stay of disputed demand

- Stay shall be granted for 180 days on payment of 20% of disputed demand
- Extension can be done for another 180 days

Disposal of appeals - 4years

Presented by -

SAI PRASAD K. A
Chartered Accountant

Cell.9949026324

saivani89@gmail.com



THANK YOU