

ART OF REPRESENTATION

11.06.2021

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BEFORE COMMISSIONER OF INCOME TAX (APPEALS)

APPEALABLE ORDERS

The list of orders under various sections against which an assessee can file an appeal before the Commissioner of Income Tax (Appeals) is provided u/s.246A of the Income Tax Act.

Under the provisions of this section an assessee can file an appeal against any order where the assessee denies his liability to be assessed under the Income Tax Act.

The orders against which an appeal cannot be filed before the Commissioner of Income Tax (Appeals) are:

- (1) An order passed in pursuance of directions of the Dispute Resolution Panel
- (2) An order passed u/s.144BA(12)

A person who is liable to deduct tax at source u/s.195 on incomes other than interest income payable by him under an agreement or arrangement and where he has deducted and paid the tax to the Central Government account can make an appeal to the Commissioner of Income Tax (Appeals) for a declaration for non-deduction of tax at source on such income if tax is not deductible on the same. This is provided for under section 248 of the Income Tax Act.

Where an order has been passed by the Assessing Officer u/s.210(3) for non payment of advance tax and issues a notice of demand u/s.156 specifying the instalments in which such tax is to be paid, the assessee can file an appeal against the said order even the said order is not specified as an appealable order u/s.246A, since under the provisions of section 246A an assessee can file an appeal before the Commissioner of Income Tax (Appeals) where the assessee denies his liability to be assessed under this Act. Likewise where an assessee denies his liability to interest levied u/s.234B he may also be able to file an appeal before the Commissioner (Appeals) u/s.246A

Giving effect orders

Appeals can be filed against the orders which were passed in pursuance of a set aside from higher authorities or where passed for giving effect to the order of the Commissioner of Income Tax (Appeals) or Commissioner of Income Tax or the Income Tax Appellate Tribunal. Basically the giving effect orders are also orders which are passed u/s.143(3) read with the relevant sections. Hence appeals can be filed before the Commissioner of Income Tax (Appeals) if the assessee is aggrieved by the said order.

Enhancement by Commissioner of Income Tax

Where an order is passed u/s.263 by the Commissioner of Income Tax directing the Assessing Officer either to enhance the assessment by making certain additions without requiring to make any further enquiries or directing the Assessing Officer to pass an order after making enquiries on certain issues, an appeal would lie against the order of the Commissioner of Income Tax u/s.263 before the Appellate Tribunal.

Against an order giving effect to the order of the Commissioner u/s.263 i.e. an order passed u/s.143(3) r.w.s. 263 by the Assessing Officer where the direction in the order u/s.263 is to make an enhancement without making enquiries no further appeal can be filed by the assessee against the giving effect order, before the Commissioner (Appeals). However where the direction of the Commissioner of Income Tax to enhance is not properly followed by the Assessing Officer then an appeal can lie before the Commissioner of Income Tax (Appeals) on the issue of non-compliance of the directions of the Commissioner of Income Tax, by the Assessing Officer.

Against an order giving effect to the order of the Commissioner of Income Tax u/s. 263 i.e. an order passed u/s.143(3) r.w.s. 263 by the Assessing Officer, where the direction in the order u/s.263 is to pass an order after making enquiries on certain issues, then if the assessee is aggrieved by the additions made in the giving effect order he can file an appeal before the Commissioner (Appeals).

Draft assessment order and final orders u/s.144C

An appeal cannot be filed against the draft of the proposed assessment order passed by the Assessing Officer u/s.144C, before the Commissioner of Income Tax (Appeals). As per sub-section (2) of section 144C, on receipt of the draft order the assessee shall within 30 days of receipt of the draft order either file his acceptance of the variation to the Assessing Officer or file his objections to such variation with the Dispute Resolution Panel and the Assessing Officer.

The Assessing Officer if he receives the acceptance of the assessee or does not receive any intimation from the assessee shall within 30 days from the end of the month in which the acceptance is received or where the period for filing of objections expires, pass the final order.

If the assessee has chosen not to file an objection before the Dispute Resolution Panel and also not intimated his acceptance to the variation proposed by the Assessing Officer in the draft order, then he can file an appeal before the Commissioner of Income Tax (Appeals) against the final order passed by the Assessing Officer.

Where a direction is passed by the Dispute Resolution Panel on the objections filed by the assessee, the Assessing Officer has to pass his final order based on the said directions. An appeal against the direction of the Dispute Resolution Panel does not lie before any higher authorities. However the assessee can file an appeal before the Income Tax Appellate Tribunal against the final order passed by the Assessing Officer.

270AA

While completing an assessment u/s.143(3) or u/s.147 where an Assessing Officer initiates levy of penalty u/s.270A for underreporting of income, the assessee if

- (i) He is not filing any appeal against the order of assessment and
- (ii) He has paid the tax and interest payable as per the order of the assessment

can make an application before the Assessing Officer in Form 68 to grant immunity from imposition of penalty u/s.270A and initiation of prosecution proceedings u/s.276C and 276CC.

The Assessing Officer shall after the expiry of period for filing appeal, subject to fulfilment of the above conditions and where the penalty u/s.270A has not been initiated for misreporting of income shall grant immunity to the assessee.

The Assessing Officer shall within a period of one month from the end of the month in which the application is received, pass an order accepting or rejecting such application. Such order is final and no appeal can be filed against the said order.

Further no appeal can be filed u/s.246A against the assessment order passed by the Assessing Officer where the Assessing Officer has rejected to grant immunity u/s.270AA.

201(1) and 201(1A)

A combined order would be passed by the Assessing Officer while treating an assessee as assessee in default u/s.201(1) for non-deduction / lower deduction of tax at source and for levying interest u/s.201(1A). Though the Assessing Officer passes a combined order, while filing appeal before the Commissioner (Appeals) the assessee should file separate appeals against the treatment of assessee in default u/s.201(1) and levy of interest u/s.201(1A)

CHALLENGING THE VALIDITY OF NOTICE IN AN APPEAL – Section 292BB

An assessee cannot challenge the validity of a notice i.e. that the notice is

- (a) Not served upon him or
- (b) Not served upon him in time or
- (c) Served upon him in an improper manner

before the Commissioner (Appeals) in an appeal against the order of assessment, if the validity of the notice is not challenged before the Assessing Officer before completion of the assessment or reassessment proceedings.

However where the assessee has not appeared in any proceeding before the Assessing Officer based on such notice or not co-operated in any inquiry relating to the assessment or reassessment he can challenge the validity of the notice before the Commissioner of Income Tax (Appeals) even if it is not challenged before the Assessing Officer. The same is provided for u/s.292BB.

CHALLENGING THE JURISDICTION OF ASSESSING OFFICER IN AN APPEAL

The time limit for challenging the jurisdiction of an Assessing Officer provided for u/s.124 is as follows

Where ROI filed u/s.139(1)	Not after (1) Expiry of 1 month from the date of service of notice u/s.142(1) or 143(2) or (2) After completion of assessment Whichever is earlier
Where ROI is not filed	Not after (1) Expiry of time limit allowed by notice u/s.142(1) or 148 for filing ROI or (2) Expiry of time limit allowed by the show cause notice u/s.144 (1 st proviso) for Best Judgement Assessment Whichever is earlier
Where action taken u/s.132 or 132A	Not after (1) Expiry of 1 month from service of notice u/s.153A(1) or 153C(2) or (2) After completion of assessment Whichever is earlier

From the above table it may be noted that if the jurisdiction is not challenged within the time limits prescribed u/s.124 the same cannot be challenged in an appeal before the Commissioner (Appeals)

FACELESS APPEAL SCHEME, 2020

The appeals filed under sections 246A or 248 of the Income Tax Act, pending or instituted on or after 25.09.2020 shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases as may be specified by the Board, under the Faceless Appeal Scheme, 2020

FACELESS APPEAL CENTRES

For the purpose of the Faceless Appeal Scheme, 2020 the Board has set up

- (i) A National Faceless Appeal Centre to facilitate the conduct of e-appeal proceedings in a centralised manner, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this scheme

- (ii) Regional Faceless Appeal Centres to facilitate the conduct of e-appeal proceedings, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this scheme
- (iii) Appeal Units to facilitate the conduct of appeal proceedings, to perform the functioning of disposing appeal, which includes
 - (a) Admitting additional grounds of appeal,
 - (b) Making such further inquiry as it thinks fit,
 - (c) Directing the National e-Assessment Centre or the Assessing Officer for making further inquiry, seeking information or clarification on admitted grounds of appeal,
 - (d) Providing opportunity of being heard to the appellant,
 - (e) Analysis of material furnished by the appellant
 - (f) Review of draft order

All communication between the appeal unit and the appellant or any other person or National e-Assessment Centre or the Assessing Officer with respect to information or documents or evidence or any other details as may be necessary under this Scheme shall be through the National Faceless Appeal Centre (NFAC)

FILING OF STATEMENT OF FACTS AND GROUNDS OF APPEAL

Where an appeal is to be filed before the Commissioner of Income Tax (Appeals) the relevant form for filing the appeal is Form 35 and the statement of facts and grounds of appeal has to be given in the said form. For writing the statement of facts the same is restricted to 1000 words in the electronic Form 35. Therefore the statement of facts has to be precise and to be restricted to the facts which are relevant for the appeal. As far as grounds of appeal is concerned there is no restriction in the number of grounds that can be raised by the appellant but the same has to be concise and not very elaborate.

The grounds should be drafted in such a manner that they are broad and general so that any kind of an argument can be covered under the said ground.

DUE DATE FOR FILING AN APPEAL

The time limit for filing an appeal before the Commissioner of Income Tax (Appeals) is 30 days from the date of service of the order against which the appeal is preferred. Earlier, when the appeals were filed manually before the Commissioner of Income Tax (Appeals) if the 30th day fell on a holiday the assessee could file the appeal on the immediate next working day. However, since e-filing of appeal has now become mandatory the appeal has to be filed within 30 days even if the 30th day falls on a holiday!

FEES FOR FILING AN APPEAL

The fees for filing an appeal before the Commissioner of Income Tax (Appeals) is as follows:

Assessed Income	Appeal filing fee
Rs.1,00,000 or less	Rs.250
More than Rs.1,00,000 but not more than Rs.2,00,000	Rs.500
More than Rs.2,00,000	Rs.1,000

Where the subject matter of the appeal is not connected to the income assessed by the Assessing Officer then the fee would be Rs.250/-

In case of appeals against the penalty order passed by the Assessing Officer the subject matter of appeal is not connected to the total income assessed by the Assessing Officer and hence the appeal filing fee would be Rs.250/-

Ajith Kumar Pandey v ITAT [2009] 310 ITR 195 (Pat)

In case where the assessed income is a loss, the fees for filing appeal before the Commissioner of Income Tax (Appeals) would be Rs.250/-

Gilbs Computers Ltd v ITAT [2009] 317 ITR 159 (Bom)

PROCEDURE FOR DISPOSING OF APPEALS UNDER THE FACELESS APPEAL SCHEME, 2020

- The National Faceless Appeal Centre (NFAC) through an automated allocation system assigns the appeal to a specific appeal unit in any one Regional Faceless Appeal Centre (RFAC)
- All communication between the appeal unit and the appellant or any other person or National e-Assessment Centre or the Assessing Officer with respect to information or documents or evidence or any other details as may be necessary under this Scheme shall be through the National Faceless Appeal Centre (NFAC)

CONDONATION OF DELAY IN FILING AN APPEAL

If an appeal is barred by time i.e. if an appeal is not filed within 30 days from the date of communication of the order of the lower authorities, an application for condonation of the delay in filing the appeal should be filed along with the appeal. Such an application should ordinarily be supported by an affidavit and other documentary evidence in support of the reasons given for the delay in filing the appeal.

Where an appeal has been filed after the time limit provided for u/s.249(2) of the Act, then the appeal unit if it is satisfied that the appellant had sufficient cause for not filing the appeal within the said time limit, admit the appeal. If it is not satisfied it may reject

the appeal. The admission or rejection of appeal will be intimated by the appeal unit to the NFAC.

In ***Collector, Land Acquisition v MST.Katiji [1987] 167 ITR 471 (SC)*** the Supreme Court has laid down the following principles for condonation of delay in filing an appeal

- (1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
- (2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
- (3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.
- (4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- (5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
- (6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

In ***N.Balakrishnan v M.Krishnamurthy [1998] 7 SCC 123***, the Supreme Court has held that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interesse reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation).

It is axiomatic that condonation of delay is a matter of discretion of the court. [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases

delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

CONDITIONS TO BE COMPLIED FOR FILING AN APPEAL BEFORE COMMISSIONER (APPEALS)

As per the provisions of section 249(4) an appeal filed before the Commissioner of Income Tax (Appeals) shall be admitted only when the following conditions are satisfied

At the time of filing the appeal,

- (a) Where a return of income is filed, the assessee should have paid the tax due on the income admitted in the return of income
- (b) Where no return of income is filed, the assessee should have paid the amount equal to the amount of advance tax which was payable by him

In the case of situation mentioned in (b) above, the appeal unit may admit the appeal and exempt the appellant from the condition for any good and sufficient reason to be recorded in writing. Otherwise it may reject the appeal. The admission or rejection of appeal will be intimated by the appeal unit to the NFAC.

CIT v Pramod Kumar Dang in ITA No.62 / Del / 2001 dated 10.01.2014

In a case where the assessee has paid the tax payable on the returned income when the appeal was pending before the Commissioner (Appeals) it was held that the appeal is maintainable.

CIT v Rama Body Builders [2001] 250 ITR 825 (Del)

Even if the interest payable on the tax due is not paid by the assessee the appeal would still be maintainable since no corresponding provisions as stated in section 140A is available u/s.249(4) i.e. under the provisions of section 140A where the amount paid by the assessee u/s.140A falls short of the aggregate of tax, interest and fee, the amount so paid will first be adjusted against the fee payable, thereafter towards the interest payable and the balance if any shall be adjusted towards the tax payable.

The admission or rejection of the appeal in the above two situations i.e. condonation of delay in filing and exemption u/s.249(4)(b), will be intimated to the appellant by NFAC.

OBTAINING OF FURTHER INFORMATION ETC BY APPEAL UNIT

Where an appeal has been admitted by the appeal unit, then the appeal unit may request the NFAC for the following:

1. To obtain further information, document or evidence from the appellant or any other person
2. To obtain a report of the National e-Assessment Centre (National Faceless Assessment Centre) or the Assessing Officer (AO) on the grounds of appeal or information, document or evidence filed by the appellant
3. To direct the National Faceless Assessment Centre or AO to make further inquiry u/s.250(4) and submit a report

The NFAC shall serve a notice on the appellant or any other person of National Faceless Assessment Centre or AO, fixing the date and time to obtain the details as required by the appeal unit.

The appellant or any other person or the National Faceless Assessment Centre or AO shall file a response / report as the case may be within the date and time specified in the notice before the NFAC. An application can be made for extension of time for submitting the details / report and the same has to be filed before the NFAC within the extended time allowed.

NFAC would send the response / report to the appeal unit. Where no response / report is received, then NFAC would inform the appeal unit accordingly.

FILING OF ADDITIONAL GROUNDS

Assessee has a right to file additional grounds before the Appellate Authorities. The additional ground has to be filed in such form, as may be prescribed and the appellant has to specify the reason for omission of such ground in the appeal filed by him.

Where an additional ground of appeal is filed:

- NFAC shall send the same to the National Faceless Assessment Centre or the AO as the case may be for their comments and to the appeal unit
- National Faceless Assessment Centre / AO has to furnish their comments within the date and time specified or within such extended time to the NFAC
- NFAC shall send such comments to the appeal unit and where no such comments are filed, inform the appeal unit accordingly.

The appeal unit after taking into consideration the comments received from the National Faceless Assessment Centre / AO, if it is satisfied that the omission of additional grounds from the form of appeal was not wilful or unreasonable admit such ground. If it is not satisfied it may not admit the additional ground. The reasons for

admission or rejection of the additional ground has to be recoded in writing and to be intimated to the NFAC by the appeal unit. The NFAC will intimate the admission or rejection of the additional ground to the appellant.

FILING OF ADDITIONAL EVIDENCE

If fresh evidence is required to be filed by the appellant other than those filed before the National Faceless Assessment Centre or the AO, the same has to be filed in such form as may be specified by the NFAC and the appellant has to specify as to how his case is covered by the exceptional circumstances specified in Rule 46A(1) of the Income Tax Rules.

Rule 46A of the Income Tax Rules, 1962, bars fresh evidence, if not produced before the Assessing Officer, unless

- ❖ The Assessing Officer had refused to admit such evidence
- ❖ The assessee was prevented by sufficient cause from producing them
- ❖ The assessee was not given sufficient opportunity to produce them.

Hence, reasons for not having produced such evidence at the assessment stage should be such as to be covered by the rule.

Where additional evidence is filed:

- NFAC shall send the same to the National Faceless Assessment Centre or the AO as the case may be for a report on the admissibility of additional evidence under Rule 46A of the Income Tax Rules.
- National Faceless Assessment Centre / AO has to furnish their report within the date and time specified or within such extended time to the NFAC
- NFAC shall send such report to the appeal unit and where no such report is furnished, inform the appeal unit accordingly.

The appeal unit after considering the additional evidence and the report furnished by the National Faceless Assessment Centre / AO, either admit or reject the additional evidence. The reasons for admission or rejection of additional evidence has to be recoded in writing and to be intimated to the NFAC by the appeal unit. The NFAC will intimate the admission or rejection of the additional evidence to the appellant.

Where the additional evidence is admitted:

- The appeal unit before taking such additional evidence into account in the appellate proceedings, through NFAC provide an opportunity to the National Faceless Assessment Centre or the AO to examine such evidence or to cross-examine such witness, as may be produced by the appellant or to produce any evidence or documents or any witness in rebuttal of the evidence or witness

produced by the appellant and to furnish a report thereof within the date and time specified in the notice

- NFAC shall serve the above referred notice to the National Faceless Assessment Centre or the AO
- National Faceless Assessment Centre / AO has to furnish their report within the date and time specified or within such extended time to the NFAC
- NFAC shall send such report to the appeal unit and where no such report is furnished, inform the appeal unit accordingly.

Request from National Faceless Assessment Centre / AO for production of document / evidence by the appellant or examination of any witness

- Where the above request is received NFAC shall send such request to the appeal unit
- The appeal unit shall consider the request and may if it deems fit, prepare a notice directing the appellant to produce such document or evidence or for examination of any witness and send the same to the NFAC which in turn would send the notice to the appellant
- The appellant or the witness shall file his response to the notice within the date and time specified or within such extended time to the NFAC
- NFAC shall send such response to the appeal unit and where no such response is furnished, inform the appeal unit accordingly.

However Rule 46A(4) provides that the Commissioner of Income Tax (Appeals) can direct the appellant to produce any document or examine any witness on his own so as to dispose of the appeal or for any other substantial cause including enhancement of assessment or penalty, whether on his own motion or on the request of the Assessing Officer u/s.251(1)(a) or for imposition of penalty under section 271.

Where the Commissioner of Income Tax (Appeals) has called for production of any document on his own during the course of appellate proceedings, then he is not obliged to call for a remand report from the Assessing Officer on the said evidences.

CIT v Surtech Hospital & Research Centre Ltd 293 ITR 53 (Bom)
CIT v Sagar Construction Pvt Ltd [2015] 56 taxmann.com 434 (Patna)

However a contrary view has been taken by the Kerala High Court in ***CIT v E.D.Benny 283 CTR (Ker) 212***

Where the CIT(A) has admitted additional evidences and has called for a remand report from the Assessing Officer and if the Assessing Officer gives a remand report in favour of the assessee i.e. where the Assessing Officer during the remand proceedings accepts the evidences filed by the assessee and opines that the additions

are not warranted considering the evidences, then the CIT(A) considering the remand report may allow the appeal in favour of the assessee. In such circumstances the revenue cannot be aggrieved by the order of the CIT(A) and file an appeal before Appellate Tribunal on the issue for which a favourable remand report was given by the Assessing Officer.

B.Jayalakshmi v ACIT [2018] 407 ITR 0212 (Mad)
Ramanlal Kamdar v CIT [1977] 108 ITR 0073 (Mad)
Jivatlal Purtapshi v CIT [1967] 65 ITR 0261 (Bom)
M.M. Annaiah v CIT [1970] 76 ITR 0582 (Mys)

ENHANCEMENT OF ASSESSMENT OR PENALTY OR REDUCTION OF REFUND

Where the appeal unit intends to enhance an assessment or a penalty or reduce the amount of refund it shall

- Prepare a show cause notice containing the reasons for such enhancement or reduction as the case may be and send the same to NFAC.
- NFAC shall serve the notice to the appellant
- Appellant to file his response to the show cause notice within the date and time specified or within such extended time to the NFAC
- NFAC shall send such response to the appeal unit and where no such response is furnished, inform the appeal unit accordingly.

Though the appeal unit has the power to enhance the assessment it cannot bring to tax a new source of income during the appellate proceedings.

CIT v Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC)
CIT v Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC)

The Delhi Full Bench in the case of ***CIT v Sardari Lal & Co [2001] 251 ITR 864 (Delhi)(FB)*** has held that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate case may be dealt with u/s.147/148 and section 263 of the Act, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority.

PREPARATION OF DRAFT ORDER

The appeal unit after taking into account

- (i) All relevant material available on record including responses filed if any, by the appellant or witness or the report furnished by the National Faceless Assessment Centre or the AO

- (ii) Any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised in the appeal

prepare in writing a draft order in accordance with section 251 and send such order to NFAC along with details of penalty proceedings if any to be initiated therein

PROCEDURE AFTER RECEIPT OF DRAFT ORDER BY NFAC

Sending draft order for Review

- Where the aggregate amount of tax, penalty, interest or fee including surcharge and cess payable in respect of the disputed issue in appeal is more than the specified amount **(not yet specified)** the draft order will be sent to an appeal unit in any one Regional Faceless Appeal Centre, other than the appeal unit which prepared such draft order, through an automated allocation system for reviewing the draft order
- In any other case, NFAC would examine the draft order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, so that it may decide to
 - (i) Finalise the appeal as per the draft order or
 - (ii) Send the draft order to an appeal unit in any one Regional Faceless Appeal Centre, other than the appeal unit which prepared such draft order, through an automated allocation system for reviewing the draft order

Review of draft order

- The appeal unit shall review the draft order and may decide to
 - (i) Concur with the draft order and intimate to NFAC or
 - (ii) Suggest such variation to the draft order and send its suggestions to NFAC
- NFAC shall
 - (i) Upon receiving concurrence of the appeal unit finalise the appeal as per the draft order
 - (ii) Upon receiving suggestion for variation from appeal unit assign the appeal to an appeal unit in one Regional Faceless Appeal Centre, other than the appeal unit which prepared or reviewed the draft order, through an automated allocation system

Review of suggestions for variation to draft order

- The appeal unit on receipt of suggestion for variation after considering the same shall
 - (i) Where such suggestion intends to enhance an assessment or penalty or reduce the amount of refund follow the procedure for laid down for enhancement or reduction of refund as the case may be and prepare a revised draft order as per the procedure
 - (ii) In any other case prepare a revised draft order as per the procedure

and send the same to NFAC along with details of penalty proceedings in any, to be initiated therein

PASSING OF FINAL ORDER

The NFAC shall pass the final order and communicate such order to the

- (i) Appellant
- (ii) PCCIT / CCIT / PCIT / CIT as per section 250(7)
- (iii) National Faceless Assessment Centre or the AO for such action as may be required under the Act

Where initiation of penalty has been recommended in the order serve a show cause notice as to why penalty should not be imposed on him.

Notwithstanding anything contained in respect of procedure in appeal as detailed above, the PCCIT / PDGIT in charge of NFAC may at any stage of the appellate proceedings, if considered necessary transfer by an order, the appeal with the prior approval of the Board to such Commissioner (Appeals) as may be specified in the order.

PENALTY PROCEEDINGS

- Appeal unit may send recommendation for initiation of penalty proceedings to NFAC for non-compliance of any notice, direction or order issued under this Scheme in the course of appeal proceedings, by the appellant or any other person.
- NFAC on receipt of such recommendation shall serve a notice on the appellant or such other person to show cause why penalty should not be imposed for such non-compliance
- Appellant or any other person to file a response to the show cause notice within the date and time specified or within such extended time to the NFAC
- NFAC shall assign the recommendation for initiation of penalty along with the response from the appellant or any other person to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system.

- The appeal unit after considering relevant material available on record either prepare a draft order levying penalty and send a copy to NFAC or drop the penalty proceedings after recording reasons under intimation to NFAC
- Where appeal unit has dropped penalty proceedings NFAC shall intimate the same to the appellant or any other person as the case may be and to the National Faceless Assessment Centre or AO for such action as may be required under the Act
- Where appeal unit has sent a draft order NFAC shall pass the order for imposition of penalty as per such draft and communicate the same to the appellant or any other person as the case may be and to the National Faceless Assessment Centre or AO for such action as may be required under the Act

RECTIFICATION PROCEEDINGS

- NFAC may amend any order passed by it for rectifying any mistake apparent from the record. Such order will be passed in writing.
- An application for rectification of mistake may be filed with NFAC by
 - (i) The appellant or any other person as the case may be
 - (ii) Appeal unit preparing or reviewing or revising the draft order
 - (iii) National Faceless Assessment Centre or AO as the case may be
- Application for rectification of mistake received by NFAC will be assigned to a specific appeal unit in any one of the Regional Faceless Appeal Centre through an automated allocation system
- The appeal unit after examining the application prepare a notice and send to NFAC for granting opportunity as follows:

Where application is received from	Notice granting opportunity to
Appellant or any other person	National Faceless Assessment Centre or the AO
National Faceless Assessment Centre or the AO	Appellant or any other person
Appeal unit preparing or reviewing or revising the draft order	Appellant or any other person and the National Faceless Assessment Centre or the AO

- NFAC will serve the notice to the respective person calling upon him to show cause as to why rectification should not be carried out under the relevant provisions of the Act

- Appellant or any other person as the case may be or the National Faceless Assessment Centre or the AO shall file their response to the show cause notice within the date and time specified or within such extended time to the NFAC
- NFAC shall send such response to the appeal unit and where no such response is filed, inform the appeal unit accordingly.
- The appeal unit after considering the application and response either prepare a draft order for rectification of mistake or for rejection of application for rectification, citing reasons thereof and send the same to NFAC
- NFAC upon receipt of draft order shall pass an order as per draft and communicate such order to the appellant or any other person and to the National Faceless Assessment Centre or AO for such action as may be required under the Act

NO PERSONAL APPEARANCE IN THE CENTRES OR UNITS

- Under the Faceless Appeal Scheme, no person is required to appear either personally or through authorised representative before the income tax authority at the National Faceless Appeal Centre or the Regional Faceless Appeal Centre or appeal unit set up under this Scheme, in connection with any proceedings.
- The appellant or his authorised representative may request for a personal hearing to make his submissions or to present his case before the appeal unit
- The CCIT / DGIT in charge of the Regional Faceless Appeal Centre under which the concerned appeal unit is set up, may approve for personal hearing if the request is covered under circumstances that may be notified
- Where a request for personal hearing is approved such hearing will be conducted exclusively through video conferencing or video telephony
- Any examination or recording of the statement of the appellant or any other person shall be conducted by the Commissioner (Appeals) in any appeal unit through video conferencing or video telephony
- The Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations to ensure that the appellant or his authorised representative is not denied the benefit of personal hearing merely on the ground that such appellant or his authorised representative does not have access to video conferencing or video telephony at his end.

154 Vs APPEAL

An appeal before the Commissioner of Income Tax (Appeals) against an order cannot be rejected for the reason that alternate remedy in the form of filing a petition u/s.154 is available to the assessee.

Where a mistake is apparent on record, the assessee can file a petition u/s.154 for rectification of such mistake. However the assessee can also file an appeal against the said mistake if it is the only issue in the order of the lower authorities. If there are other issues against which an appeal is preferred by the assessee then grounds relating to the apparent mistake can also be raised in the said appeal. If the mistake is rectified through an order u/s.154, the assessee can withdraw the appeal if the apparent mistake is the only issue in the appeal or withdraw the grounds challenging the apparent mistake alone, in the appeal filed before the Commissioner of Income Tax (Appeals).

FRESH CLAIM BEFORE THE APPEAL UNIT

An assessee may not be able to make a fresh claim which was not made in the return of income, before the Assessing Officer during the course of assessment proceedings without filing a revised return of income for making such fresh claim. **Goetze (India) Ltd. v CIT (2006) 284 ITR 323 (SC).**

However the assessee can make such a fresh claim before the Commissioner (Appeals) during the course of appellate proceedings even without filing a revised return of income.

CIT v Jai Parabolic Springs Ltd [2008] 306 ITR 42 (Del)
ACIT v Prakash Industries Ltd in ITA No.4288 / Del / 2004
Kisan Discretionary Family Trust v ACIT [2008] 113 TTJ (Ahd) 918
Shriram Pistons & Rings Ltd v Inspecting AC [1989] 35 TTJ (Del) 166

LEGAL HEIRS

In case where an appeal is to be filed in respect of an order passed in the name of a person who has deceased or where the entity is not in existence due to amalgamation, demerger etc, the appeal has to be filed in the name of the legal heirs of the deceased person or in the name of the new entity.

The validity of the order passed in the name of the deceased person or in the name of the non-existing entity can be challenged before the Appellate Authorities either for quashing the order or for setting aside the order.

Pr. CIT v Maruti Suzuki India Limited [2019] 416 ITR 613 (SC)
CIT v M.Hemanathan in TCA No.199 / 2016 (Mad)
Late A.Y.Prabhakar (Indl) v ACIT [2006] 105 TTJ (Chennai) 391
Sivaganga Investments Ltd v JCIT in ITA No.114 / Mds / 2000
CIT v Kumari Prabhawati Gupta & Ors [1998] 231 ITR 188 (MP) Chhoharmal Wadhuram v CIT [1971] 80 ITR 360 (Guj)
T.Palani v ACIT in W.P.No.2531 / 2019 (Mad) – HC

REVISION OF ORDER U/S.264

The Commissioner of Income Tax as per the provisions of the section 264(4) cannot revise any order if

- (a) An appeal lies against an order before the Commissioner of Income Tax (Appeals) / Tribunal and where the time limit for filing the appeal has not expired or where the assessee has not waived his right of appeal
- (b) An order has been made subject matter of an appeal before the Commissioner (Appeals) or the Appellate Tribunal

The Commissioner of Income Tax unlike in the case of order passed u/s.263 cannot revise an order u/s.264 even if the issue which was sought to be revised was not subject matter of appeal before the Commissioner (Appeals) or Appellate Tribunal.

Hindustan Aeronautics Ltd v CIT 243 ITR 808 (SC)

However where an assessee is not successful in a revision petition filed u/s.264, there is no bar on the assessee in approaching the Commissioner (Appeals) in an appeal against the order, on which revision u/s.264 was sought by the assessee.

CIT v D.Lakshminaryanpathi [2001] 250 ITR 187 (Mad)

APPEALS TO COMMISSIONER (APPEALS) UNDER THE WEALTH TAX ACT, 1957

Appeals under the Wealth Tax Act can be filed before the Commissioner of Income Tax (Appeals) in Form E, manually against the orders passed by the Wealth Tax Assessing Officer specified u/s.23A of the Wealth Tax Act, within 30 days from the date of receipt of the order of the Wealth Tax Assessing Officer.

The fee for filing appeal before Commissioner (Appeals) is Rs.250/-

Similar provisions that are contained in the Income Tax Act are provided for in the Wealth Tax Act.

APPEALS TO COMMISSIONER (APPEALS) UNDER THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

Section 6 of the Black Money Act, states that the income tax authorities specified in section 116 of the Income Tax Act shall be the tax authorities for the purpose of the Black Money Act.

Section 116 of the Income Tax Act includes Commissioner of Income Tax (Appeals) as an income tax authority.

Section 15 of the Black Money Act allows any person to file an appeal before the Commissioner (Appeals) i.e. before the Commissioner of Income Tax (Appeals) in the following situations where the said person:

- (a) objects to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; or
- (b) denies his liability to be assessed under this Act; or
- (c) objects to any penalty imposed by the Assessing Officer; or
- (d) objects to an order of rectification having the effect of enhancing the assessment or reducing the refund; or
- (e) objects to an order refusing to allow the claim made by the assessee for a rectification under section 12,

The appeal before the Commissioner (Appeals) has to be filed in Form 2 within a period of 30 days from—

- (a) the date of service of the notice of demand relating to the assessment or penalty, or
- (b) the date on which the intimation of the order sought to be appealed against is served in any other case.

Every appeal filed u/s.15 of the Black Money Act shall be accompanied by a fee of Rs.10,000/-

Rule 6 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 provides that no appeal under sub-section (1) of section 15 shall be admitted unless at the time of filing of the appeal the assessee has paid the tax along with penalty and interest thereon on the amount of liability which has not been objected to by the assessee.

Similar provisions relating to power of Commissioner (Appeals) and procedure to be followed in an appeal as are applicable to an income tax appeal under the Income Tax Act, are provided for under this Act.

APPEALS TO COMMISSIONER (APPEALS) UNDER THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Adjudication and Appeal

An adjudicating authority under the Foreign Exchange Management Act, as per Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 hold enquiries and pass an order imposing penalty under section 13 of the Act. An order passed by the Adjudicating authority is appealable before Special Director (Appeals).

Under the provisions of section 17(1) of the Act, the Central Government shall by notification appoint one or more Special Director (Appeals) to hear appeals against the orders of the Adjudicating Authorities and also specify the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

The Central Government vide Notification in *F.No.K-11022/65/2015-Ad.ED dated 05.02.2016* has appointed the Commissioner of Income Tax (Appeals) as the Special Director (Appeals) to hear appeals filed against the orders of the Adjudicating Authority and has also specified their jurisdiction.

As per the said notification the

- ✓ Commissioner of Income Tax (Appeals), Delhi – 35 will be in charge of Zones Delhi, Chandigarh, Jaipur, Jalandhar and Srinagar and Sub Zones Dehradun and Shimla
- ✓ Commissioner of Income Tax (Appeals), Kolkata – 23 will be in charge of Zones Kolkata, Guwahati, Lucknow and Patna and Sub Zones Bhubaneswar, Allahabad and Ranchi
- ✓ Commissioner of Income Tax (Appeals), Mumbai – 6 will be in charge of Zones Mumbai, Ahmedabad and Panaji and Sub Zones Surat, Nagpur, Indore and Raipur
- ✓ Commissioner of Income Tax (Appeals), Chennai – 5 will be in charge of Zones Chennai, Kochi, Bengaluru, Hyderabad and Sub Zones Madurai and Kozhikode.

An appeal to the Special Director (Appeals) u/s.17 of the Act has to be filed in Form I prescribed by the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 under Rule 5, within 45 days from the date of receipt of the order of the Adjudicating Authority.

The appeal in Form I has to be filed in triplicate along with three copies of the order of the Adjudicating Authority.

The appeal has to be filed with a fee of Rs.5,000/- payable in cash or in the form DD in the name of the Special Director (Appeals)

Where an applicant is unable to file an appeal within 45 days from the date of receipt of the order of the Adjudicating Authority, the appeal has to be accompanied by a petition in triplicate duly verified and supported by documents showing cause the reason for the delay in filing the appeal.

As per Rule 6 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 the Special Director (Appeals) has to send a copy of the appeal filed by the applicant to the Director of Enforcement.

A notice of hearing has to be issued by the Special Director (Appeals) to both the applicant as well as the Director of Enforcement

Where on the date of hearing or on any other date to which the hearing was adjourned if the applicant or the presenting officer from the Enforcement Directorate fail to appear when the appeal is called for hearing, the Special Director (Appeals) may decide the appeal on merits within 180 days from the date of such appeal.

An order made by the Special Director (Appeals) under this Act shall be executable by the Special Director (Appeals) as a decree of civil court and, for this purpose, the Special Director (Appeals) shall have all the powers of a civil court.

BEFORE INCOME TAX APPELLATE TRIBUNAL

APPEALABLE ORDERS

The orders against which an appeal can be presented before the Appellate Tribunal is provided u/s.253(1) which includes the following

- (1) Order u/s.250 passed by the Commissioner of Income Tax (Appeals)
- (2) Order u/s.154 passed by the Commissioner of Income Tax (Appeals)
- (3) Order u/s.263 passed by the Principal Commissioner or Commissioner of Income Tax
- (4) Order passed by the Assessing Officer in pursuance of Directions of the Dispute Resolution Panel
- (5) Order passed by the Commissioner of Income Tax (Exemptions) passed u/s.12AA or 12AB rejecting registration or u/s.80G(5)(vi)
- (6) Order passed by the prescribed authority u/s.10(23C)(iv) / (v) / (vi) / (via)
- (7) Order passed by the Principal Chief Commissioner or Commissioner or Principal Director General or Director General or Principal Director or Director levying penalty u/s.272A(2)(f) for failure to deliver or cause to be delivered in due time a copy of the declaration mentioned in section 197A i.e. in Form Nos.15G / 15H

Before proceeding to discuss other aspects it may be noted that similar powers which are available to the Commissioner (Appeals) for condonation of delay in filing an appeal, admission of a fresh claim which was not made before the Assessing Officer are available to the Appellate Tribunal. The power to enhance an assessment which is available to the Commissioner (Appeals) is not available to the Appellate Tribunal. The Appellate Tribunal however has the power to set aside an assessment to the Assessing Officer for doing afresh, which power is not available to the Commissioner of Income Tax (Appeals).

GROUND OFS OF APPEAL

Where an appeal is to be filed before the Appellate Tribunal, the assessee need not file a statement of grounds. The relevant form for filling the appeal before the Appellate Tribunal is Form 36 and the grounds of appeal forms part of the said form. There is no restriction in the number of grounds that can be raised by the assessee but the same has to be concise and not very elaborate. The grounds should be drafted in such a manner that they are broad and general so that any kind of an argument can be covered under the said ground.

CONCISE GROUND OFS OF APPEAL

The grounds of appeal have to be concise and not argumentative or narrative. The grounds of appeal though not to be in elaborate language, any potential ground for substantiating the relief prayed for should not be left out. In a case if an appeal has been filed with detailed grounds, then the assessee will have to concise the elaborate grounds filed and file it afresh before the Appellate Authorities. It must be ensured that all the points elaborated in the detailed grounds is covered in the concise grounds of appeal. A separate prayer is not required for filing concise grounds of appeal.

ADDITIONAL GROUNDS

Assessee has a right to file additional grounds before the Income Tax Appellate Tribunal. However Additional ground has to be filed along with a prayer for permitting it to be taken as an additional ground. Even where the ground forms part of the memorandum of appeal filed before the Appellate Tribunal, if the said ground was not raised before the Commissioner (Appeals) and is raised for the first time before the Appellate Tribunal the said ground has to be filed again with a prayer to file the same as an additional ground

Leave to raise an additional ground before the Appellate Tribunal cannot be rejected simply on the ground that the prayer was oral and not written

Amines Plasticizers Ltd v CIT [1997] 223 ITR 173 (Gau)

It has been held in the following cases that assesses are allowed to raise additional grounds before the Appellate Tribunal if they are beneficial to the assessee and the same should be considered by the Tribunal even though the said issue was not adjudicated before the Commissioner (Appeals)

National Thermal Power Co. Ltd v CIT [1998] 229 ITR 383 (SC)* *CIT v Indian Bank [2015] 55 taxmann.com 372 (Mad)

Additional ground can be permitted to be raised even beyond the limitation period of 60 days for filing the appeal memo.

Madad Ali Ansari & Co v DCIT [2005] 272 ITR 560 (Raj)* *Shilpa Associates v ITO [2003] 263 ITR 317 (Raj)

ALTERNATE GROUNDS

Alternate grounds should always be raised wherever possible. It is better that such alternate grounds are raised even before the first appellate authority, which has plenary power to admit any *bonafide* additional ground, which was not agitated before the Assessing Officer.

Even where the assessee is successful before the first appellate authority and the matter comes before the Tribunal by way of second appeal, it may be worthwhile to raise any alternate ground by way of cross-objection or during the hearing, preferably in writing.

It is sometimes felt that raising an alternate ground almost concedes the case by giving an impression of weakness in the case. Even where there is such a possibility, this is a risk, which has to be taken considering that the alternate ground, which may give atleast a partial relief, may well be lost, if not raised in time.

Alternate ground may be raised using the words “without prejudice to the above claim” or “assuming without conceding” or “alternatively” to make it clear that the ground raised is an alternate ground.

CROSS OBJECTIONS

It is possible that the Department might file an appeal, while the assessee may choose to accept the order in first appeal though some of the minor additions have been upheld. A departmental appeal provides an opportunity for cross-objection within 30 days of receipt of the memorandum of departmental appeal by the assessee. A reappraisal of the order of the first appellate authority so as to raise a ground, which was earlier intended to be abandoned, may be raised by way of cross-objection.

Cross-objections are often filed merely to support the order of the first appellate authority. This is not necessary. But it may be advisable in some cases, where the first appellate authority has decided the issue on a ground different from what was canvassed. For example, an assessee might have objected to an addition on grounds of jurisdiction as well as on merits. If the relief has been allowed on either ground, the other ground may be taken by way of cross-objection. Even this is not necessary, as it is open to the respondent in an appeal to defend the order of the first appellate authority on grounds different from what had convinced him. But a cross-objection ensures closer attention and avoids the possibility of any argument being overlooked.

Even where the taxpayer had got reconciled to a confirmed addition, because it has been partially successful, provision for cross-objection provides an opportunity, when it is filed in prescribed form without appeal fee within thirty days of receipt of notice of departmental appeal. Time limit is relaxable for sufficient cause. Right to cross-objection is a valuable right and should be used, wherever it is advisable.

Whenever an appeal or a cross objection is filed which is connected with an appeal or cross objection relating to the same party filed earlier, reference hereto should be made in the latter appeal or cross objection to facilitate their linking in the office of the Tribunal.

Where an assessee has not availed the opportunity to file a cross objection before the Appellate Tribunal, Rule 27 of the Income Tax Appellate Tribunal Rules comes to the rescue of the assessee.

Under Rule 27, though the assessee has not filed any appeal or cross objection he may support the order appealed against on any of the grounds decided against him. Reference in this connection may be made to the following decisions

DCIT v Turquoise Investment & Finance Ltd & Ors [2008] 300 ITR 1 (SC)
DCIT v Turquoise Investment & Finance Ltd [2008] 299 ITR 143 (MP)
ACIT v Turquoise Investment & Finance Ltd [2004] 89 ITD 155 (Ind)

DUE DATE FOR FILING AN APPEAL

The time limit for filing an appeal before the Appellate Tribunal is 60 days from the date of service of the order against which the appeal is preferred. If the 60th day falls on a holiday the assessee can file the appeal on the immediate next working day and that the appeal would not be considered as one which is filed with a delay.

Though cross objections are also treated as an appeal, the time limit for filing a cross objection before the Appellate Tribunal is 30 days from the date of receipt of the Memorandum of appeal filed by the Department. Here also if the 30th day falls on a holiday, the assessee can file the cross objection on the immediate next working day and that the cross objection would not be considered as one which is filed with a delay.

FEES FOR FILING AN APPEAL

The fees for filing an appeal before the Appellate Tribunal is as follows:

Assessed Income	Appeal filing fee
Rs.1,00,000 or less	Rs.500
More than Rs.1,00,000 but not more than Rs.2,00,000	Rs.1,500
More than Rs.2,00,000	1% of assessed income subject to a maximum of Rs.10,000

Where the subject matter of the appeal is not connected to the income assessed by the Assessing Officer then the fee would be Rs.500/-

In case of filing of cross objections, there is no fees for filing the same

In case of filing of stay application before the Appellate Tribunal, the fee for the same is Rs.500/-

In case of filing a miscellaneous petition before the Appellate Tribunal, the fee for the same is Rs.50/-

In case where an appeal is filed against the order of the Commissioner of Income Tax (Appeals), where the Commissioner (Appeals) has rejected the appeal on the ground of limitation, the assessee has to pay only the minimum fee of Rs.500

Rajakamal Polymers (P) Ltd v CIT [2007] 291 ITR 314 (Kar)
Naresh Babu v ITO [2010] 5 ITR (Trib) 485 (Hyd)

In case of appeals against the penalty order passed by the Assessing Officer the subject matter of appeal is not connected to the total income assessed by the Assessing Officer and hence the appeal filing fee would be Rs.500/-

Ajith Kumar Pandey v ITAT [2009] 310 ITR 195 (Pat)

In case where the assessed income is a loss, the fees for filing appeal before the Commissioner of Income Tax (Appeals) would be Rs.500/-

Gilbs Computers Ltd v ITAT [2009] 317 ITR 159 (Bom)

DEFECTS IN APPEAL

In case of appeals filed before the Appellate Tribunal in the relevant form i.e. Form 36, if there are any defects in filling the form or signing the form or in the annexures to the form, then the office of the Appellate Tribunal would intimate the defects in the appeal to the appellant/ respondent and provides time to rectify the same.

Generally the following defects would arise in filing an appeal before the Appellate Tribunal

1. Mentioning of respondent as PCIT / CIT in an appeal against the order passed u/s.263, where the respondent should be the Assessing Officer
2. Non filing of order of CIT(A) / AO in triplicate along with the appeal memo
3. Non filing of Form 35 along with the statement of facts and grounds of appeal filed before the CIT(A)
4. Non filing of petition to condone the delay in filing the appeal when the appeal is belatedly filed
5. Non attestation of challan towards fees for filing the appeal by the appellant or by his authorised representative
6. Non filing of Form 26AS to show that appeal filing fee is paid in others column
7. Non payment of requisite fee for filing the appeal
8. Form 36 not properly verified i.e. non mentioning of the name or designation of the person who has signed the form or non affixing of seal where the form is signed by partner, director etc.

Though the appeal may be numbered and listed for hearing, the same would be heard by the members only if the defects pointed out in the appeal are duly rectified by the appellant/ respondent.

PAPER BOOK

Paper book is most important for presenting a case before the Tribunal. Where the appeal involves large amounts or a number of issues it would be easier to present before the Tribunal, if proper evidences for each issue is filed in the form of a paper book. Whatever evidences/ documents in support of the arguments to be made before the Tribunal and which have already been filed before the Assessing Officer during the course of assessment proceedings or before the Commissioner of Income Tax (Appeals) during the course of appellate proceedings, has to be serially numbered and indexed and filed before the Income Tax Appellate Tribunal in the form of a paper book. Case laws which are to be relied on for presenting the appeal has to be filed as a separate book and not as a part of paper book.

Where the paper book could not be filed a week before the hearing as required under Rule 18(1) of the Income Tax (Appellate Tribunal) Rules, 1963, a petition for condonation may be filed along with the paper book.

The following particulars are generally necessary.

- (i) Ensure that all requisite enclosures and prescribed number of copies are filed
- (ii) Prepare paper book, wherever necessary, properly numbered and indexed
- (iii) A certificate is required that the paper book contains only documents which are produced before the authorities below.

AFFIDAVITS

An affidavit can be filed by an assessee as evidence to support his claim. Where the assessee had filed an affidavit duly sworn by him and if he was neither cross-examined nor called upon to produce any documentary evidence, the assessee is entitled to assume that the Income tax authorities were satisfied with the affidavit as sufficient proof and that the said affidavit cannot be rejected by the Assessing Officer.

Mehta Parikh & Co. v CIT [1956] 30 ITR 181 (SC)
L.Sohanlal Gupta v CIT [1958] 33 ITR 786 (All)

AFFIDAVIT IN TERMS OF RULE 10

Where the Assessing Officer or the Commissioner of Income Tax (Appeals) in the order passed by them has stated any facts contrary to the records, then the assessee can file an affidavit in terms of Rule 10 of the Income Tax Appellate Tribunal Rules, stating clearly and concisely the actual fact.

In ***Mohan Breweries & Distilleries v ACIT [2009] 116 ITD 241 (Chennai)*** the Chennai Tribunal held that if the facts stated by the AO & CIT(A) are wrong then evidence has to be adduced in terms of Rule 10 and Rule 29 of Income Tax Appellate Tribunal Rules and a mere statement would not be in accordance with said rules. The said order has been affirmed by the Madras High Court in ***[2012] 340 ITR 477 (Mad)***.

ADDITIONAL EVIDENCES

Where any document or evidence which was not filed before the lower authorities i.e. before the Assessing Officer during the course of assessment proceedings or before the Commissioner (Appeals) during the course of appellate proceedings, a separate petition in respect of admission of such document / evidence with reasons for non-production of the same before the authorities below, may be filed.

Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, disentitles parties to produce additional evidence and such evidence may be admitted by the Tribunal only if the authorities had decided the case without giving the assessee sufficient opportunity

HEARING OF APPEAL EXPARTE BY APPELLATE TRIBUNAL

The Appellate Tribunal can hear the appeal exparte if on the day fixed for hearing the appellant does not appear in person or through an authorised representative when the appeal is called for hearing. In such circumstances the Appellate Tribunal can dispose off the appeal for non-appearance or decide the case on merits after hearing the respondent.

When an appeal has been disposed off in the above manner, then if the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for non-appearance on the day when the case was called for hearing, then the Tribunal may set aside the exparte order and restore the appeal for fresh hearing. The same is provided for under Rule 24 of the Income Tax Appellate Tribunal Rules.

Rule 25 of the Income Tax Appellate Tribunal Rules provides for a similar rule in the case of exparte dismissal of appeals where the respondent has not put in appearance on the day when the case was called for hearing.

ADJUDICATION OF ALL GROUNDS

Commissioner (Appeals) as well as Appellate Tribunal has to avoid disposing off the matters on preliminary issues alone, without deciding all the issues raised before them. They should so far as possible give their views on all the points raised before them so that the higher Courts will have the benefit of their decision on the other points also if the necessity arises. For example where an assessee has raised grounds challenging the reopening as well as on the additions made by the Assessing Officer, the Commissioner (Appeals) though he is satisfied that the reopening is not valid and decides to quash the assessment order, he must decide the appeal also on merits.

CIT v Ramdas Pharmacy [1970] 77 ITR 276 (Mad)

REFERENCE TO THIRD MEMBER

The Bench of the Appellate Tribunal is constituted by two members. One has to be a Judicial Member and the other has to be an Accountant Member. Where in any particular case, the two members who heard the case has a difference of opinion in any particular issue, then the same may be formulated as a question by them for the decision of a third member. The President of the Appellate Tribunal would nominate the third member for hearing the case. The third member under the provisions of section 255(4) has the power to give a decision on the points on which the members of the Appellate Tribunal had differed by agreeing to the view of any one of the member.

The decision of the Third member has the same force as that of a Special Bench unless there is a Special Bench decision to the contrary. This view has been taken by the Mumbai Special Bench of the Appellate Tribunal in ***DCIT v Oman International Bank SAOG [2006] 100 ITD 285 (Mum)(SB)***

CONSTITUTION OF SPECIAL BENCH

Where different Benches have taken conflicting views on certain points, the President, under the provisions of Section 255(4), may, for the disposal of any particular case, constitute Special Bench consisting of three or more Members, one of whom shall necessarily be a Judicial Member and one an Accountant Member. Such cases are to be put up before the President for constituting Special Bench.

Where any case is referred to a Special Bench, the assessee would be required to file additional sets of documents as there would be additional members in addition to the regular bench who would be hearing the case.

Assessee may also file a petition to the President of the Appellate Tribunal seeking constitution of Special Bench where there are conflicting views of various Benches of the Appellate Tribunal.

MONETARY LIMIT FOR FILING DEPARTMENT APPEAL

The monetary limit prescribed by the CBDT vide Circular No.17 of 2019 dated 08.08.2019 above which alone the revenue can file an appeal before the Appellate Tribunal is Rs.50 lakhs of tax, surcharge and cess on the disputed issue. The same does not include interest levied on the tax. This monetary limit is applicable in case of appeals against wealth tax orders and penalty orders also.

The tax effect has to be calculated separately for each assessment year in respect of the disputed issues. Even if the order of the appellate authority is a consolidated order for more than one assessment year, the tax effect has to be calculated for the issues separately for each assessment year and appeals can be filed only for those years where the tax effect is not less than the monetary limit fixed. This would apply even if there are common issues in all the assessment years.

In a case where the Composite order involves more than one assessee tax effect has to be calculated in respect of each assessee separately

MISCELLANEOUS APPLICATION BEFORE ITAT

The Appellate Tribunal shall, amend its order passed u/s.254(1) if there are apparent mistakes in the said order and that the same is brought to the notice of the Appellate Tribunal, through a miscellaneous application, by the assessee or by the Assessing Officer, within 6 months from the end of the month in which the order was passed.

The procedure for dealing with the miscellaneous applications filed u/s.254(2) is given under Rule 34A of the Income Tax Appellate Tribunal Rules.

The application shall clearly and concisely state the mistake apparent on record of which the rectification is sought and that the same should be filed in triplicate before the Appellate Tribunal.

The application will normally be heard by the same Bench which had heard the appeal that gave rise to this application. In disposing of this application an order would be passed by the Appellate Tribunal.

PETITION FOR STAY OF DEMAND BEFORE ITAT

A stay application can be filed for stay of recovery of demand of tax, interest, penalty etc before the Appellate Tribunal where the appeal against the said demand of tax, interest, penalty etc is pending before the Appellate Tribunal.

The following are the requirements in a stay application that is to be filed before the Appellate Tribunal

- (1) Short facts regarding the demand of tax, interest, penalty etc
- (2) Result of the appeal filed before the Commissioner (Appeals)
- (3) Exact amount of tax, interest, penalty etc demanded, the undisputed amount and the balance amount outstanding as payable
- (4) Date of filing of appeal and the number allotted
- (5) Status of stay application filed before lower authorities
- (6) Reasons in brief for seeking stay
- (7) Whether any security can be offered by the assessee
- (8) Prayer stating exact amount sought to be stayed
- (9) Affidavit supporting the contents of the application sworn by the applicant

As per the amendment made by the Finance Act, 2020 Appellate Tribunal would grant a stay, only if 20% of the amount of demand raised by the Assessing Officer is paid by the assessee or only if the assessee furnishes a security for at least 20% of the total amount of demand raised by the Assessing Officer.

PETITION FOR STAY OF OPERATION OF ORDER U/S.263

An order u/s 263 can be made only where the order of an Assessing Officer is erroneous and prejudicial to the interests of the revenue. If the assessee can prima facie establish that there is no error in the order of the Assessing Officer then the assessee can approach the Appellate Tribunal for stay of operation of the order u/s.263. The Appellate Tribunal has inherent powers to grant stay of operation of the order passed u/s 263.

ITO v Khalid Mehdi Khan [1977] 110 ITR 79 (AP)

CIT v ITAT in WP No.4684 of 2010 – Del HC

NIIT v CIT in ITA Nos.2057 to 2063 / Del / 2010 – Delhi ITAT

DRESS CODE FOR THE AUTHORISED REPRESENTATIVES

Rule 17A of the Income Tax Appellate Tribunal Rules prescribes the dress code to be followed, by the Authorised Representatives (other than a relative or regular employee of the assessee) while appearing before the Appellate Tribunal.

- (a) In the case of male, a suit with a tie or buttoned-up coat over a pant or national dress, *i.e.*, a long buttoned-up coat on dhoti or churidar pyjama. The colour of the coat shall, preferably, be black.
- (b) In the case of female, black coat over white or any other sober coloured saree.

Where any other dress code is prescribed in respect of authorised representatives who belong to a profession like Lawyers or Chartered Accountants for appearing in their professional capacity before any Court, they may at their option appear in that dress before the Appellate Tribunal in lieu of the above dress code prescribed under Rule 17A

APPEALS TO APPELLATE TRIBUNAL UNDER THE WEALTH TAX ACT, 1957

Appeals under the Wealth Tax Act can be filed before the Income Tax Appellate Tribunal in Form F, manually against the orders passed by the Commissioner (Appeals) specified u/s.24 of the Wealth Tax Act, within 60 days from the date of receipt of the order of the Commissioner (Appeals).

The fee for filing an appeal before the Appellate Tribunal is Rs.1000/-. If the subject matter of the appeal is not connected to net wealth then the fees for filing the appeal is Rs.500/-

Similar provisions that are contained in the Income Tax Act are provided for in the Wealth Tax Act.

APPEALS TO APPELLATE TRIBUNAL UNDER THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

Section 18 of the Black Money Act allows any assessee who is aggrieved by an order passed by the

- (i) Commissioner (Appeals) u/s.15
- (ii) Principal Commissioner or the Commissioner under any provision of this Act (i.e. order passed u/s.23 to revise an order passed by the tax authority where the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue.

to file an appeal before the Appellate Tribunal against such order.

[Note: The revision order passed by the Principal Commissioner or the Commissioner may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.]

The Principal Commissioner or the Commissioner objecting to the order passed by the Commissioner (Appeals) under any provision of the Black Money Act, may direct the Assessing Officer to file an appeal before the Appellate Tribunal

An appeal shall be filed before the Appellate Tribunal in Form 3 within a period of 60 days from the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or the Commissioner, as the case may be.

Every appeal filed u/s.18 of the Black Money Act shall be accompanied by a fee of Rs.25,000/-

Filing of Cross objections as provided for under the Income Tax Act is also provided for under the Black Money Act. The cross objections has to be filed in Form 4 and within 30 days from the date of receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred by the other party. No fee has been prescribed for filing a cross objection

The Appellate Tribunal shall exercise the same powers and follow the procedure as it exercises and follows in hearing and making an order on any appeal under the Income-tax Act. However the Appellate Tribunal while admitting an appeal or cross objection filed beyond the limitation period, can admit only where the delay in filing does not exceed a period of 1 year.