



Appeals before Appellate Authorities under the Income Tax Act, 1961

April 27th, 2019

Presented by: Mr. Gaurav Jain

Appeal before the Commissioner of Income Tax (Appeals) - Section 246A



Appealable orders u/s 246A

Appeal can be filed before the CIT(A) against orders referred in section **246A** of the Act, which covers substantial orders passed under the Act, such as:

- **Intimation/ Assessment**: u/s 143(1)/(1B), u/s 143(3), u/s 163
- **Rectification**: u/s 154
- **Reassessment**: u/s 147
- **TDS/ TCS**: u/s 200A(1), u/s 206CB(1), u/s 201; u/s 206C(6A)
- **Search/ Seizure**: u/s 153A
- **Penalty**: u/s 221; u/s 271, u/s 271A, u/s 271AAA, u/s 271AAB, u/s 271F, u/s 271FB, u/s 272AA or u/s 272BB; u/s 275(1A), u/s 271B or u/s 271BB; u/s 271C, u/s 271CA, u/s 271D or u/s 271E, u/s 272A, u/s 272AA; under Chapter XXI

Non - Appealable orders before the CIT(A)

- Order passed u/s 144C pursuant to DRP directions
- Revisionary order passed by CIT u/s 263
- Order revoking registration u/s 12A passed by DIT(E) u/s 12AA(3)
- Order disposing legal objections u/s 147

Appealable orders u/s 248

- With respect to the payment to non-residents, an assessee can dispute its obligation to deduct tax at source through an application under section 195(2) of the Act.
- A separate appeal against such order passed by the AO under section 195(2) can be challenged before CIT(A) under section **248** of the Act.

Time limit for filing appeal

- Appeal before CIT(A) has to be filed within **30 days** from the date of the service of relevant order, along with requisite appeal fee prescribed in section 249(1) of the Act.
- The CIT(A) can condone delay in filing the appeal beyond 30 days, if sufficient cause behind such delay is established.

Meaning of sufficient cause -

The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply law in a meaningful manner which sub serves the ends of justice and to dispose matters on merits.

- ✓ Collector, Land Acquisition v Katiji (Mst) (1987) 167 ITR 471 (SC)
- ✓ CIT v. Gangadhar Gowd Rama Gowd & Co (1986) 158 ITR 75 (AP)
- ✓ CIT (Addl) v Prem Kumar Rastogi (1978) 115 ITR 503 (All.)

Procedure for filing appeal

- Appeal has to be filed **electronically** in duplicate Form No. 35, complete with the grounds of appeal and statement of facts prescribed under Rule 45 of the Income Tax Rules, 1962 ('the Rules').
 - ✓ The electronic form prescribes a fixed word limit, not exceeding 1000 words in case of statement of facts and 100 words per ground for grounds of appeal;
 - ✓ No special characters except for comma (,); dash(-), slash (/) and round brackets [()] are accepted while filing of the electronic form.
- Where return is filed electronically, the appeal form has to be filed electronically.
- Where the assessee has an option to file return in paper form, as per Rule 45 read with Rule 12(3) of the Rules, an appeal can be filed in paper form as well.
- The return form has to be signed by the person authorized to file the return of income under section 140 of the Act.

Hearing of appeal – Additional GOA

- Sub section (5) of section 250 empowers the CIT(A) to allow the appellant to raise additional grounds of appeal if satisfied that, the omission thereof was not willful or unreasonable. The aforesaid is a discretionary power which is exercised based on the facts and circumstances of each case. **(refer Jute Corporation of India Ltd. vs. CIT: 187 ITR 688 (SC)).**
- Where a claim not made in return of income, including revised return of income, although the AO is not empowered to allow such claim, the same can be raised before CIT(A) as additional grounds of appeal.
 - ✓ Goetze India Ltd. v. CIT 284 ITR 323 (SC)
 - ✓ CIT v. Jai Parabolic Springs Ltd. 306 ITR 42 (Del.)

Stay of Demand

- No automatic stay of demand on filing of appeal, or during the pendency of such appeal, with the CIT(A) [Refer: Union of India v Nawn (BC) (1972) 84 ITR 526 (Cal.)]

- Power with CIT(A) to grant stay

Favorable view

- The powers of granting stay on demand are inherent with CIT(A) u/s 251
 - ✓ Paulsons Litho Works v ITO (1994) 208 ITR 676 (Mad.)

Contrary View

- Power relating to stay is governed by the provision of section 220(6) of the Act which is vested with the AO.
- Stay to be granted by AO in accordance with guidelines contained in CBDT Circular dated 29.02.2016

Stay of Demand- AO

- When appeal is pending disposal before the CIT(A), the power to grant stay of demand vests with the AO. The AO relies upon the CBDT's office memorandum for granting stay on recovery of balance demand, subject to payment of 20% of disputed demand.
- However, Courts have consistently held the insistence on payment of 20% of disputed demand merely on the basis of the Office Memorandum despite prima facie case of the assessee, as not justified
 - ✓ PCIT & Ors. v. LG Electronics India (P) Ltd: 303 CTR 649 (SC)
 - ✓ Turner General Entertainment Networks India Pvt. Ltd. v. ITO: WP (C) 682/2019 & CM APPL. 3018/2019 (Del.)
 - ✓ Mrs. Kannammal v. ITO: W.P.No.3849 of 2019 and W.M.P.No.4278 of 2019 (Mad.)
 - ✓ ARCIL Retail Loan Portfolio 001-D- Trust v. PCIT: W.P (L) NO. 810 of 2019 and Oths

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Hearing of appeal – Additional Evidence

- Rule 46A lists down the circumstances wherein an assessee can be entitled to produce such evidence, which covers cases -
 - where the AO refused to admit such evidence;
 - where the assessee was prevented by sufficient cause from producing such evidence which was called upon by the AO;
 - where the assessee was prevented by sufficient cause from producing evidence relevant to any ground of appeal; or
 - where the AO has made the order without providing sufficient opportunity to the assessee to adduce evidence relevant to any ground of appeal.

Hearing of appeal – Additional Enquiry

- Power to make further enquiry is different from the power to remand, as wherein the CIT(A) made the enquiry himself, cannot remand the case to the AO.
- CIT(A) can confirm, reduce, enhance, or annul the assessment by virtue of the powers conferred u/s 251.
- The CIT(A) can make further enquiries allowing the assessee to produce additional papers/ evidence, as provided under sub section (4) to section 250. The CIT(A) may either conduct the enquiry himself or either direct the AO to make further inquiry and report the results derived.
 - ✓ *Jwaladutt Jiwankumar v. CWT* (1974) 95 ITR 183 (Cal.)
 - ✓ *Punjab Ice Factory & Cold Storage v CIT* (1986) 160 ITR 761 (Pat)
 - ✓ *CIT v. Jan Sampark Advertising and Marketing P Ltd.* (2015) 375 ITR 373 (Del.)¹³

Hearing of appeal - Power of Enhancement

- The CIT(A) is vested with the power to enhance the assessment.
 - **View I:** Appellate powers are not confined to the matters considered by the AO and, therefore, it is open to the CIT(A) to make addition relating to new sources of income not considered by the AO, since power of CIT(A) are co-terminus with those of the AO.
 - **View II:** Power of enhancement by CIT(A) is restricted to the sources of income subject matter of consideration by the AO [refer **Jagdish Narayan Sharma v. ITO :194 TTJ 825 (Jaipur Tri.); Hari Mohan Sharma v. ACIT: ITA No. 2953/Del/2018)**

Power of Enhancement- Penalty

- **Power to enhance the quantum of penalty**: The CIT(A) has the power to enhance quantum of penalty imposed by the AO.
 - ✓ CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar.)
 - ✓ Bhoomareddy Bros v. CIT (1987) 163 ITR 854 (Kar.)
 - ✓ CIT v. Lotte India Corporation Ltd. (2007) 290 ITR 248 (Mad.)
- If any enhancement / addition to income is made in appeal by CIT(A), then it is only the CIT(A) who can initiate the penalty proceedings under section 271 or 270A of the Act.

Power to set- aside

- CIT(A) has no power to set aside the assessment for fresh verification by the AO
- CIT(A) has to give finding on each ground of appeal raised by the assessee
- CIT(A) can, however, give findings on legal issue(s) involved and set aside the matter for verification and give effect to the finding of the CIT(A) on the answered question of law.
 - ✓ Addl. CIT v. Samad Carpet (P) Ltd.: 116 ITR 811 (All.)
 - ✓ ITO v. Kalyan Kumar Roy Trust: 75 ITD 36 (Cal.)(TM)
- CIT(A) can, however, remand the matter to the AO for verification of facts or conducting necessary enquiries and submitting its report for consideration and adjudication of matter by the CIT(A). [Section 250(4)]

Appeal before Income Tax Appellate Tribunal (ITAT)

(Section 253)



आयकर अपीलीय अधिकरण
INCOME TAX APPELLATE TRIBUNAL



Appeals to the Tribunal

- Appeal can be filed in **Form 36/36B**, within **60 days** from the date of receipt of relevant order, verified by the **person duly authorized** to sign the return of income of the assessee u/s 140 accompanied by an **appeal fee of Rs. 10,000** before the Tribunal, against orders prescribed in section 253 of the Act:
 - **Passed by AO** u/s 115VZC(1); u/s 143(3) or u/s 147 or u/s 153A or u/s 153C and u/s 154, in pursuance of the DRP directions
 - **Passed by CIT(A)** u/s 154, u/s 250, u/s 271, u/s 271A or u/s 272A; at the direction of the PCIT/ Commissioner against order passed u/s 154 or u/s 250
 - **Passed by PCIT/ Commissioner** u/s 12AA, u/s 80G(5)(vi), u/s 263

Appeals to the Tribunal - GOA

- Grounds of Appeal shall be set forth:-
 - Concisely;
 - Under Distinct Heads;
 - Without any argument;
 - Without being narrative;
 - Numbered Consecutively;
 - Countering every allegation/ adverse finding;
 - All issues which the appellant wants to agitate before ITAT

Cross Objections

- Section 253(4) makes available with both the AO and the assessee, the option to file a memorandum of cross objections against the order passed by the CIT(A) in appeal by either party.
- The cross objections are to be filed within **30 days** of receipt of notice intimating the fixing of such appeal.
- Additional grounds of appeal can be taken for the first time, not arising from the order of lower authorities in a cross objection.
 - ✓ PCIT v. Silver Line: 383 ITR 455 (Del.)
 - ✓ Fast Booking India Pvt. Ltd. v. DCIT (2015) 378 ITR 639 (Del.)

Right of Respondent – Rule 27

- Respondent to an appeal can support the order in appeal, on the grounds decided against him by virtue of Rule 27 of the ITAT Rules, 1963 ('Tribunal Rules')
- Right of Respondent to raise additional ground/ point
 - ✓ CIT v. Hazarimal Nagji & Co.: 46 ITR 1168 (Bom)
 - ✓ Assam Co. (India) Ltd. v. CIT: 256 ITR 423 (Gau)
 - ✓ B.R. Bamasi v. CIT: 83 ITR 223 (Bom)
 - ✓ Kanpur Industrial Works v. CIT: 59 ITR 407 (All.)

Early hearing and Consolidation of appeals

- Application can be filed before Tribunal by the assessee regarding early listing of appeal.
 - ✓ Dr. Prannoy Roy v. DCIT W.P(C) 4742 &4743/ 2018
 - ✓ Olympia Paper & Stores v. ACIT 63 ITD 148 (Del.)
- For consolidation of multiple appeals, a proper comprehensive application before the ITAT is to be moved by either of the party, subsequent to which the Tribunal passes a reasoned order.
 - ✓ BPTP Ltd. v. PCIT [2018] 406 ITR 475 (Delhi)

Stay before the Tribunal

- Section 254(1) confers within, powers of significant amplitude to the Tribunal while disposing appeals before it, thereby executing all such actions necessary for such disposal.
 - ✓ Recovery in relation to penalty [refer ITO v. Mohammed Kunhi (MK) (1969) 71 ITR 815 (SC)]
 - ✓ Prosecution proceedings [refer PCIT v. ITAT: 382 ITR 321 (P&H)]
 - ✓ 143(3)/ 263 order [refer CIT v. ITAT and Ors: WP(C) No. 4684/2010 (Del)]
- Party(s) to appeal to establish prima facie merits of each ground of appeal.
- Discretionary power with the Tribunal to grant complete stay of demand or grant stay subject to fulfilment of certain conditions like part payment, security etc.
- Financial Stringency - Relevant criteria to seek stay
- Financial capacity to pay – Not determinative for denial of stay

Stay before the Tribunal

- Procedure for filing and disposal of stay petition is governed by Rule 35A of the Tribunal Rules wherein an application for stay of demand to contain:
 - Short facts regarding demand;
 - Result of appeal filed before CIT(A);
 - Exact amount of demand, including paid and outstanding
 - Date of filing appeal to ITAT with appeal No.;
 - Reasons for grant of stay;
 - Offer of security, if any, and form thereof;
 - Specific Prayer
 - Affidavit and challan of Rs.500

Hearing of Stay application

- The Tribunal cannot grant stay beyond a period of 180 days, further extendable up to **365 days**. However, if the delay in disposal of appeal is not attributable to the assessee, stay can be extended **beyond** the aforesaid period of 365 days [**refer CIT vs. M/s. Vodafone Mobile Services Ltd.: ITA No. 331 of 2017 dated 18.09.2017 (AP)**]
- If the Revenue disobeys the order of Tribunal and proceeds with the recovery despite stay order, the assessee can approach the Tribunal for strictures against the action of Revenue [**refer DIT(E) v. ITAT 361 ITR 469 (Bom. HC)**]
- The Tribunal while disposing the stay application would pre-fix the date of hearing of the quantum appeal.
- Due to the condition of stay, the stay granted appeal is fixed first on board and adjournment therefor cannot be sought by the assessee.

Powers of the Tribunal – Additional GOA

- Tribunal has the power to admit additional grounds, provided facts are on record
 - ✓ National Thermal Power Co. Ltd. v. CIT: 229 ITR 383 (SC)
- If facts not on record, additional Grounds of appeal can be admitted and matter may be set aside for verification by AO
 - ✓ DCM Benetton India Ltd. v. CIT: 173 Taxman 283 (Del. HC)
 - ✓ ONGC v. Addl. CIT: ITA No. 357 & 358/Del./2005 (Del. ITAT)
- No time limit to file additional grounds of appeal
 - ✓ K.C. Khajanchi v. Income Tax Appellate Tribunal in C.W. No. 2164/99
 - ✓ Zakir Hussain v. CIT (2006) 202 CTR (Raj.) 40
 - ✓ Jindal Polyester & Steel Ltd. v. DCIT (ITA No.2521/Del/1997) (Del.Tri.)

Powers of the Tribunal

- Article 265 of the Constitution –No tax could be collected without authority of law.
 - ✓ CIT v. Sam Global Securities Ltd: 360 ITR 682 (Del)
 - ✓ CIT v Geo Industries and Insecticides (I) Pvt Ltd: 234 ITR 541 (Mad.)
- There is no estoppel in law - Tribunal must entertain a legitimate claim
 - ✓ CIT v. Bharat General Reinsurance Co. Ltd: 81 ITR 303 (Del)
 - ✓ HCL Technologies v. ACIT: 377 ITR 483 (Del)
- Additional evidence could be admitted by Tribunal, by virtue of powers contained in Rule 29 of the Tribunal Rules
 - ✓ CIT v. Text Hundred India (P.) Ltd: 351 ITR 57 (Del) – The additional evidence could be admitted in the interest of justice.

Hearing before the Tribunal

- The appellant is required to place before the Tribunal, a paper book of documents filed before lower authorities.
- As per Rule 18 of the Tribunal Rules, the paper book should be
 - ✓ authority legible, duly indexed, with proper page numbering;
 - ✓ each page should be certified as a true copy by the authorized representative and
 - ✓ the authority before which it was filed needs to be clearly pointed out.
- There is no requirement to file written submissions unless directed by the Tribunal.

Hearing before the Tribunal

- To address arguments ground-wise
- To clearly state facts and corroborate with reading of assessment and appellate orders.
- The appellant can furnish legal propositions in support of such grounds of appeal and support the legal propositions with judicial and binding precedents.
- To understand/ summarize the arguments of opposite party i.e. Revenue or Appellant can give rejoinder arguments.
- There should be no repetition of arguments in the Rejoinder. The parties are required to address the new and incorrect facts raised by the opposite party, or distinguish the judicial precedents cited in support thereof.
- To close the arguments with necessary prayer for decision by the Tribunal qua each ground of appeal.

Powers of the Tribunal

- The Tribunal is the final fact finding authority - Can go into confirmation of facts involved in each ground of appeal, notwithstanding admission of facts by CIT(A).
- If incomplete facts are on record or incomplete investigation of facts by the assessing officer, the Tribunal can –
 - Set aside the matter for fresh verification of facts by the assessing officer;
 - Call for the assessment record for perusal [**refer S.K. Gupta & Co. vs. ITO: 246 ITR 560; CIT v. ITAT and Ors: WP(c) No. 4684/2010 (Del.)**]
 - Decide appeal in favor of assessee, if Revenue is found to not have made out a complete case or did not complete investigation of facts

Restrictions on the Powers of the Tribunal

- The Tribunal has no power of enhancement
 - ✓ Hukumchand Mills Ltd. v. CIT: 63 ITR 232 (SC)
 - ✓ MCorp Global (P.) Ltd. v. CIT: 309 ITR 434 (SC)
- The Tribunal cannot change the complexion of the case:
 - ✓ Indian Steel & Wire Products v. CIT: 208 ITR 740 (Cal)
 - ✓ CIT v. G.M. Chennabasappa: 35 ITR 261 (AP)
 - ✓ Slocum Investment (P.) Ltd. v. DCIT: 106 ITD 1 (Del. ITAT)

Contra

- ✓ Fidelity Business Services India (P.) Ltd. v. ACIT: 257 Taxman 266 (Kar. HC)
- The Tribunal cannot uphold order u/s 263 on a different ground
 - ✓ CIT v. Jagadhri Electric Supply & Industrial Co.: 140 ITR 490 (P&H)

Ex – Parte Appeal

- Whether Tribunal has to dispose the appeal on merits or can dismiss the appeal in limine (at the start)?

On limine -

- ✓ CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del)

On merits -

- ✓ CIT V. Ansal Housing & Construction Limited: 274 ITR 131 (Del.)

- Re-call of ex-parte order governed by Rule 24/25 of ITAT Rules which permits recall of ex-parte order by Tribunal if appellant/ respondent shows sufficient cause for non-appearance.
- There is no specified date or format prescribed but an affidavit needs to be filed in support of the application.

Miscellaneous Application u/s 254(2) of the Act

- Power to file M.A. seeking correction of mistakes apparent from record.

Mistake apparent from record comprise of arithmetical or clerical errors which can be corrected.

- ✓ Kishan Lal vs. CIT: 303 ITR 188 (All.)
- ✓ Bhilai Engineering Corporation Limited vs. DCIT: 81 ITD 282
- ✓ Kuldip Singh v. Krishan Kumar [1974] AIR 145 (Del.):
- Power to recall the order if order suffered from mistake apparent from record.
 - ✓ Lachman Dass Bhatia Hingwala (P.) Ltd. vs. ACIT: 330 ITR 243
- Period of limitation of 6 months to file M.A from the receipt of order
 - ✓ Hindustan Coca-Cola Beverage (P.) Ltd. v. CIT: 293 ITR 226 (SC)

Miscellaneous Application u/s 254(2) of the Act

- Instances comprising of mistake apparent from record
 - Non-consideration of the binding precedent or later decision of jurisdictional High Court/ Supreme Court [**refer ACIT v. Saurashtra Kutch Stock Exchange 3054 ITR 227 (SC)**];
 - Non-adjudication of ground of appeal
 - ✓ Esthuri Aswathiah vs. CIT 66 ITR 478 (SC)
 - ✓ CIT vs. K.Y. Pilliah & Sons 63 ITR 411 (SC)
- Instances not comprising of mistake apparent from record
 - Debatable issue; [**refer T.S. Balaram, ITO v. Volkart Brothers 82 ITR 50 (SC)**]

THANK YOU

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