

APPEAL BEFORE CIT(A)

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- The expression '**appeal**' has been defined in Black's law dictionary as "A proceeding undertaken to have decision reconsidered by a higher authority."
- The party complaining is styled as the appellant & the other as the respondent.

Is an Appeal a Right?

- The right of appeal is not inherent or a fundamental right but it is a creature of the Statute governing it. The right to appeal must be given by express enactment & cannot be implied – [Hariher Gir v. CIT \(1941\) 9 ITR 246 \(Pat\)](#).
- Further, the statutory provision conferring the right of appeal have to be consulted to determine the nature & extent of that right – [Haji Gulam Husain & Sons v CIT \(1957\) 31 ITR 231 \(All.\)](#).
- An appeal is a continuation of assessment proceedings. The right to appeal is a substantive right which gets crystallized when assessment proceedings are initiated – [CIT v Bengal Cardboard Industries & Printers Pvt. Ltd. 176 ITR 193 \(Cal.\)](#).

Is an Appeal a Right?

- An assessee cannot complain for not providing a right of appeal by the legislature against the tax imposed on him
- [The Supreme Court in Express Hotel Pvt. Ltd. v State of Gujarat \(1989\) 178 ITR 151](#) has held that the absence of the appeal provision doesn't make the provision per se unreasonable.
- The Court cannot change the language of a provision in order to infer a right of appeal, if no such right is provided by the Statute -[Vidyapat Singhania v CIT 107 ITR 533 \(All\)](#).
- [R.B Jodha Mal Kuthiala v CIT.66 ITR 319 \(Del.\)](#)- Held that in case of ambiguity the relevant provision must be construed in favour of the existence of a right of appeal.

Hierarchy of Appeals under the Income Tax Act

Appeal

Nature of Action	Appeal to be filed before	Order against which it can be preferred	Who can file appeal?
First Appeal	Commissioner of Income Tax (Appeals)	Order of the AO	Assessee
Second Appeal	Income Tax Appellate Tribunal	Against order of the First Appellate Authority [CIT(A)]	Taxpayer (Assessee) Or Revenue
Appeal before the High Court	High Court	<i>Substantial question of law</i> arising out of the order of ITAT	Taxpayer (Assessee) Or Revenue
Appeal before the Supreme Court	Supreme Court	Judgement of the High Court	Taxpayer (Assessee) Or Revenue

Hierarchy of Appeals under the Income Tax Act

Appeal against Revision u/s. 263 or Registration u/s. 12AA

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First Appeal	Income Tax Appellate Tribunal	Against order of Commissioner	Taxpayer (Assessee)
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Monetary Limit for appeals by department

1. The Department can file an appeal before Appellate Authorities if the tax effect exceeds the monetary limit as specified vide [Circular No. 3/2018 dated 11.07.2018](#) are given hereunder :

Appeals in Income Tax Matters	Monetary Limit (In Rs.)
Before ITAT	Rs 20,00,000/-
Before the High Court	Rs 50,00,000/-
Before Supreme Court	Rs 1,00,00,000/-

Orders against which Appeals can be filed before CIT(A)

1. An order against the assessee who denies his liability to be assessed
2. Order u/s. 92CD(3) – Determination of arm's length price
3. Order of Joint Commissioner u/s. 115VP(3)(ii) – Refusal order for tonnage tax scheme.
4. Intimation u/s. 143(1), 143(1B) – Arithmetical error/incorrect claim
5. Order u/s. 200A(1) – Statements of TDS viz., Form 26Q, Form 24Q etc.
6. Order u/s. 206CB(1) – Statements of TCS
7. Order u/s 143(3) not including an order passed in pursuance of directions of the DRP
8. Order u/s. 144BA(12) – Order passed without prior approval of PCIT/CIT, if any tax consequences have been determined under
9. Order u/s 143(3) r. w. s. 147 or 150- Assessment order/Re-assessment order.
10. Order u/s. 153A –Assessment in case of search or requisition.

Orders against which Appeals can be filed before CIT(A)

11. Order u/s 154/155-Rectification of mistakes apparent from records.
12. Order u/s 163- Assessee being treated as agent.
13. Order u/s 170(2)/ 170(3)- Order in case of succession to business/profession.
14. Order u/s 171- Assessment after partition of HUF.
15. Order u/s. 185- Assessment when a firm fails to comply with sec 184.
16. Order u/s 201 – Order for failure to deduct/pay taxes.
17. Order u/s. 206C(6A) – Order for failure to collect taxes.
18. Order u/s 237 – Order for refunds.
19. Order imposing Penalty under Chapter XXI

Orders against which Appeals can be filed before CIT(A)

20. Where under an agreement or other arrangement, the tax deductible on any income, other than interest, u/s. 195 is to be borne by the payer who claims that no tax was required to be deducted on such income.
21. Where orders show revised computation of total income and particular levy of interest under section 220(2) is only one of many items considered in 'giving effect' orders, it can be deemed either as an order passed under section 154 or passed under section 143(3), and is thus appealable. - [Precot Meridian Ltd. \[2013\] 38 taxmann.com 13 \(Chennai - Trib.\)](#)
22. An appeal can be filed against inclusion of income, erroneously included by the Assessee in its Return of Income. – [CIT vs Bharat General Reinsurance \[1971\] 81 ITR 303 \(Delhi\)](#)

Orders which are not specified under section 246-A are non appealable orders. Eg.

1. Order of Refusal to grant stay of demand.
2. Order passed u/s 197(1).
3. Assessment made on an agreed basis - [Sterling Machine Tools v. CIT \(123 ITR 181\)\(All.\)](#)
4. Orders with agreed additions (No one can be aggrieved by own admission)
5. No objection by the assessee to the rectification of assessment order - [Ramanlal Kamdar v. CIT \(108 ITR 73\)\(Mad.\)](#)
6. Rectification u/s. 154 on assessee's consent - [CIT v. Cochin Malabar Estate and Industries Ltd. \(180 ITR 152\)\(Ker.\)](#)
7. Interest charged u/s. 220(2). – [ANZ Grindlays Bank PLC v. CIT \(241 ITR 269\)\(Cal.\)](#)

Who can file appeal ?

Status of the Assessee	Person Eligible to file appeal
Individual	<ul style="list-style-type: none">• Individual himself• Any person authorized by the individual
HUF	<ul style="list-style-type: none">• Karta• If karta is absent from India, any other adult member
Firm	<ul style="list-style-type: none">• Managing Partner• Any other partner except minor (If the managing partner is unable to verify)
Company	<ul style="list-style-type: none">• Managing Director (If the managing partner is unable to verify)• Any other director
Others	<ul style="list-style-type: none">• Person competent to act

Requirements for filing CIT(A) Appeal

1. Form 35
2. Statement of Facts
3. Grounds of Appeal
4. Notice of Demand u/s. 156
5. Assessment order u/s. 143(3) [or any other order being appealed against]
6. Challan of Appeal fees paid
7. Incase of appeal against penalty order, the order of penalty plus assessment order.

For Online filing of Appeals, the above documents are required in PDF format.

Also required:

1. DSC/EVC of person authorized to sign on behalf of the Assessee

Checklist for filing of Appeal

1. On receipt of order and notice of demand, note the date of service of order and notice of demand.
2. List out the additions made, disallowances, whether a notice was issued u/s. 143(2) for assessment and the order passed are within the prescribed time limit. Section 292BB to be taken into consideration.
3. Check sec.246A to ensure that the order is appealable and under which clause.
4. Ensure that all the notices and replies filed thereto in the course of appeal proceedings are at hand. If not, then one may comply with all such notices before the order is passed. Show-cause notices should not be ignored.
5. Prepare a reconciliation of return income and assessed income.
6. Hair-split the various reasons on which a particular additions/disallowances is made.
7. Prepare application for rectification in respect of mistakes, which are apparent from record.

8. Find out if AO has recorded that the assessee has agreed for addition.
9. Apply for order sheet notings where AO has relied on the same.

CBDT letter dated 30.11.2017

10. Where statement during survey, search or assessment proceedings are relied upon by AO or statement of third parties are relied upon or third party evidences are relied upon call for the same. Take necessary actions if assessee doesn't have the same.
11. Prepare a statement of facts and the grounds of appeal.
12. Statement of facts should highlight each and every fact, since there is only one opportunity for filing the statement of facts.
13. Ensure that form 35 is correctly filled up and digitally signed.
14. Grounds of appeal should be simple, concise, aptly worded, and serially numbered issue-wise.

Checklist for filing of Appeal

15. After raising all the grounds of appeal, crave leave to add, to amend, alter, modify, delete, etc. any of the grounds of appeal without which the CIT(A) may not allow to take some additional grounds or even withdraw the ground.
16. Ensure to incorporate all additions, disallowances made in the assessment order from different angles i.e. put alternative claims with the words “Without prejudice to above”.
17. Ensure all payment of taxes and interest as per the return of income are duly paid to comply with the provisions.
18. Pay appropriate appeal-filing fees.
19. Ensure that the appeal is filed with the jurisdictional CIT (A) as mentioned on the rear side of the demand notice.
20. File a stay-petition with the Assessing Officer in respect of demand within 30 days of the date of service of the order.
21. If 20% of the disputed demand is paid where appeal is filed before CIT(A), balance demand would be kept in abeyance.- [CBDT Office memo F.No.404/72/93-ITCC, dated 31.07.2017](#)

- *Statement of facts must not exceed 1000 words, and each Ground of Appeal must not exceed 100 words per ground. However, one has to **upload a consolidated PDF file** containing the SoF and GoA while filing the appeal.*
- Do not use special characters. ('-', '/', '@', '&' etc.)
- Ensure active **Email Address & Mobile no.** is entered in Form 35.
- Details of Pending appeals with the CIT is to be stated in Form 35.
- List of documentary evidences relied upon by the assessee is to be mentioned in form 35

Online filing of CIT(A) Appeal

- If any evidence other than evidence submitted to the AO is relied upon, then ensure that the additional documentary evidence is listed in the Form 35 and if possible upload while filing appeal.
- Prepare PDF copies of the Assessment order and the Notice of demand which is duly attested.
- Attachments must not exceed 50mb in size and must be in pdf/zip format.
- In the new Form 35, it is required to cite the relevant Section(s) under which the addition/ disallowance has been made.
- DSC of the person authorized to verify is a must for filing the Appeal.
- Also, the order number is required for e-filing.

Time Limit for filing of Appeal

- The appeal shall be presented **within 30 days** of the following date:
 1. Where the appeal is made u/s. 248, the date of payment of tax, or
 2. Where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty, or
 3. In any other case, the date on which order sought to be appealed against is served.
- In computing the aforesaid time limit of 30 days, the day on which an order was served shall be excluded. Moreover, if the assessee was not furnished with the copy of the order when the notice of demand was served upon him, the time requisite for obtaining a copy of such order shall be excluded – *CIT v Prem Kumar Rastogi (1980) 124 ITR 381 (All.)*.

Appeal Filing Fees

- Assessed Income of Rs. 1 lakh or less Rs. 250
 - Assessed Income of more than Rs. 1 lakh and less than Rs. 2 lakhs Rs. 500
 - Assessed Income of more than Rs. 2 lakhs Rs. 1000
 - Cases not covered above Rs. 250
- ✓ Total income determined at negative figure – **“Minimum Fees”**
[Gilbs Computer Ltd. Vs ITAT – 317 ITR 159(Bom)]

Appeal Filing Fees

- In case of appeal to the tribunal against levy of concealment penalty u/s 271(1)(c), since the quantum of penalty is not linked to assessed income but tax sought to be evaded, a proper filing fee is Rs. 500 in ITAT. Same analogy can also be applied for CIT (A) and thus, proper filing fee before CIT(A) would be Rs. 250.- *Amruta Enterprises v Dy. CIT 84 ITD 172 [Mumbai Tribunal]*
- Similarly, in case of appeals made against the order u/s. 201 in connection with the TDS matters, proper filing fee before CIT(A) would be Rs. 250 irrespective of the amount involved.

Delay in filing Appeal: Condonation of Delay

- The appeal has to be filed within the time limit of 30 days from the receipt of impugned order.
- The limitation period commences from the date of receipt of notice of demand by the assessee and not from the date of receipt of Assessment Order. – *Charki Mica Mining Co. Ltd. vs CIT [1978] 111 ITR 193 (Calcutta)*
- The Commissioner of Appeals **may admit an appeal after the expiry of the said period**, if he is satisfied that the appellant has **sufficient cause** for not presenting it within the time period.
- Courts have taken the view that the condonation of delay should be viewed broadly and this power be exercised liberally.
- The CIT should have a pragmatic and liberal approach.- *Mst. Katiji vs Collector Land Acquisition [167 ITR 471(SC)]*

“Sufficient reasons” for Condonation of Delay

1. Wrong advice given to the appellant – *R.Ranganayaki Ammal 38 ITR 20 (Mad.)*
2. Delay due to the mistake of the income tax officer stating in the demand notice that the appeal lies with the Appellant Assistant Commissioner (AAC) instead of the Tribunal- *Avtar Kishan Dass 133 ITR 338 (Del.)*
3. Conflicting legal advices - *Smt. Laxmi Devi AIR (1988) (All.) 133*
4. If the mistake was committed by the Counsel in filing the appeal before a wrong forum
5. Where the managing partner of the assessee’s firm was hospitalised and so couldn’t contact the concerned auditors in time for filing appeals.

- Sec 249(4)(a) provides that no appeal shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due on the income returned by him.
- As per the sec.249 (4)(b), where no return is filed, amount equal to the amount of advance tax which was payable by him has been paid.
- The proviso to sec. 249(4) provides for exemption of payment if the case is covered by sec. 249(4)(b) and the CIT (Appeals) is satisfied as to good sufficient cause.
- Decisions wherein appeals were held to be valid if taxes are paid before the disposal of appeal.
 - a. CIT v Rama Bodybuilders (2001) 117 Taxman 68 (Del.)*
 - b. Filmistan Ltd. Vs CIT 42 ITR 163 (SC)*
 - c. T Gopindappa Setty v ITO 231 ITR 892 (Kar.)*

- The assessee, having filed an appeal and brought the machinery of the Act into operation, can't prevent the first appellate authority from asserting and settling the real sum to be assessed, by intimation for his withdrawal of appeal. - *CIT v Rai Bahadur Hardutoy Motilal Chamaria(1967) 66 ITR 443(SC)*.
- However, the Bombay High Court in case of *Jagmondas Gokaldas v CWT (1963) 50 ITR 578* has held that **“true, an appellant can't as a matter of right claim to withdraw an appeal but there is nothing illegal in doing so with the permission of Appellate Authority”**.

- The assessee should be given reasonable opportunity of being heard to rectify the errors and the appeal shall be heard on merits. – *Harilelas vs ITO 16 ITD 356 (MUM)*
- The CIT(A) shall intimate the defects to the assessee and give reasonable time to cure such defects. – *Malani Trading Co. vs CIT 252 ITR 670 (BOM)*
- Appeal cannot be dismissed for defect in form without giving opportunity to the assessee. – *Haryana State Roads and Development Corporation Ltd vs DCIT (ITAT Chandigarh) [ITA No. 582/Chd/2016]*

Presenting of Additional Grounds of Appeal

Section 250 (5) says that the First Appellate Authority may at the hearing of an appeal allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

1. *Jute Corporation of India Ltd. v CIT (1991) 187 ITR 688(SC)*
2. *National Thermal Power Co. Ltd. v CIT 229 ITR 383(SC)*
3. *Ahmedabad Electricity Co. Ltd. v CIT 199 ITR 351(Bom.)*
4. *CIT v Western Rolling Mills Pvt. Ltd. (1985) 156 ITR 54 (Bom.)*

- He may confirm, reduce, enhance or annul the assessment.
- In an appeal against an order imposing a penalty , he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty.
- In any other case, he may pass such orders in the appeal as he thinks fit.
- He cannot reduce the amount of refund or enhance the assessment or penalty unless a reasonable opportunity is given to the assessee.
- The scope of CIT(A)'s powers is contiguous with that of AO. CIT(A) can do what AO can do and can also direct him to do what he has failed to do.

[*CIT Vs. Kanpur Coal Syndicate 53 ITR 225(SC)*]

- Sec. 250(4) confers jurisdiction to the First Appellate Authority to make such inquiry as he deems fit.
- The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry or may direct the Assessing Officer to make further inquiries, and report the result to him.

The Commissioner (Appeals) has a discretionary power to admit fresh or additional evidence subject to Rule 46A. The rule 46A requires the appellant to fit his case within the conditions specified therein for additional evidence which are as under:

- a. The AO has refused to admit evidence which ought to have been admitted.
- b. The assessee was prevented by sufficient cause from submitting the evidence in the assessment proceedings.
- c. The AO has made assessment order without giving sufficient opportunity to the assessee.

However, any evidence called for by the CIT(A) which was not filed before the Assessing Officer will be outside the purview of Rule 46A.

- Rule 46A is regulatory in the matter of admission of additional evidence and not a fetter on the powers of the First Appellate Authority.
- Further, the Commissioner (Appeals) shall allow the additional evidence after recording the reasons in writing and giving reasonable opportunity to the AO.
 - *Smt. Prabhavati S. Shah v. CIT [1998] 231 ITR 1 (Bom.)*
- If the new details were filed before the CIT(A) were in continuation of the original evidence, then it is not necessary to give an opportunity to the Assessing Officer. – *CIT vs Poddar Swadeshi Udyog P. Ltd. [2007] 295 ITR 252 (Gauhati)*
- This rule does not specifically exclude principles of natural justice and therefore these principles are necessarily to be read into provisions of Rules. – *CIT vs United Towers (I) (P) Ltd.- 296 ITR 106 (Delhi)*

Judgements binding on CIT(A)

- All the judgements pronounced by the hon'ble Supreme Court are binding on all courts in India.
- All the judgements pronounced by jurisdictional High Court and ITAT are binding on the CIT(A).
- Where there are conflicting decisions of courts of co-ordinate jurisdiction (the same rank), the later decision is to be preferred if reached after full consideration of the earlier decisions.
- When there are judgements on the assessee for previous years and the facts are the same, then they are binding on the CIT(A) for the subsequent assessment years.
- The Precedent ceases to have a binding force in the following situation:
 - A. If it is overruled or reversed by a higher court
 - B. When it is affirmed or reversed on a different ground
 - C. When it is inconsistent with the earlier decision of the same rank.
 - D. When it is non-speaking judgement.

- After conclusion of hearing, the CIT(A) will issue a order of the appeal.
- If it is in favour of the “Assessee”, either in full or partial, he has to file a request with AO for appeal effect. In such case, the AO has a right to go in appeal with ITAT.
- In case the order is not in favour of the “Assessee”, he has to decide to file second appeal, an appeal before jurisdictional ITAT within 60 days.

- Subsection (6A) to the section 250 has been introduced w.e.f. 1st June, 1999 which puts condition where it is possible, the CIT (A) may hear and decide such appeal within a period of 1 year from the end of a financial year, in which such appeal is filed before him under subsection (1) of section 246A. The language employed in the sub-section is of directory nature and is not mandatory.
- As per CBDT's Instruction no.20/2003 dated 23rd December, 2003 reiterated in [F No. 279/ Misc 53/2003 dated 19/06/2015](#), the Appellate Authorities should pass an Appellate Order in all cases within 15 days after the final hearing and in all duly heard cases before relinquishing charge on transfer or proceeding on leave.

Stay of Recovery proceedings

The power of the Appellate Authority to stay recovery of demand of dues, which are the subject-matter of the appeal pending before him, is independent of the provisions of sec.220(6) and it is not necessary that before invoking the power of the first Appellate Authority, an assessee should approach the Assessing Officer u/s. 220(6) or that the AO must reject the prayer of the assessee for stay of demand.

- Study the assessment order in depth and carefully and understand the facts of the case and the background involved in each addition.
- Study all the replies filed before the AO during the assessment proceedings.
- Identify the weak points in relation to each additions made.
- Prepare paper book with index containing all written submissions filed, evidences in support of assertions made in the written submissions.
- Prepare exhaustive written submissions relevant to each ground of appeal. Highlight the important submissions in bold or italics.

- Make special efforts in emphasizing as to how and why the AO was wrong and based on actual facts and legal issues. Controvert the stand taken by the AO duly supported by documentary evidences , legal position and decided cases by the courts.
- Have proper knowledge of all the facts of the case. Reply to the queries raised by the CIT(A) be offered promptly and to the point.
- Do not get provoked with the seemingly irrelevant queries by the CIT(A).
- Avoid unnecessary arguments and altercations in case if the CIT(A) is not satisfied with your arguments.

