

APPEALS PROCEEDINGS UNDER INCOME TAX ACT, 1961

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The term appeal has nowhere been defined under the Income Tax Act.

However as per Mozley and Whiteley's Law Dictionary **"Appeal is a complaint to a superior court of an injustice done by an inferior one"**.

The party complaining is styled as the **"Appellant"** and the other party is known as **"Respondent"**.

Under the scheme of the Income Tax Act, an assessment is normally the first Stage determining the Taxable Income and The Tax, Interest or Sum Payable by an Assessee.

The Act provides for various remedies available to an assessee on completion of the assessment.

The primary remedies available to an assessee on completion of the assessment are:

: APPEALS

: REVISION

: RECTIFICATION

All these remedies work in different areas. However, strictly speaking the remedies are not alternative to each other but at times more than one remedial proceeding may be used as complimentary to each other so as to achieve the best result by applying optimum resources.

The procedures governing these remedial provisions are proposed to be discussed hereunder:

APPELLATE HIERARCHY

NATURE OF ACTION	TO WHOM IT SHOULD BE FIELD	Against whose order it can be preferred	Who can prefer
First Appeal	Commissioner(appeals) [CIT (A)]	Against the order of Assessing officer	Taxpayer
Second Appeal	The Income Tax Appellate Tribunal	Against the order of the CIT(A)	Taxpayer or commissioner of Income Tax
Appeal to high court	High Court	Substantial question of law arising out of ITAT order	Taxpayer or commissioner of Income Tax
Appeal to supreme court	Supreme Court	Judgment of High Court	Taxpayer or commissioner of Income Tax

APPEAL BEFORE THE COMMISSIONER OF INCOME-TAX(APPEALS)

An appeal before the Commissioner of income tax (Appeals) is an extremely useful remedy available to an assessee.

The commissioner of Income Tax (Appeals) is the first appellate authority under the scheme of the Act.

This forum helps in redressing the grievances that the assessee might have against the assessment order passed in his case.

However, one should bear in mind that the **right of appeal is not an inherent right but it is a statutory right created due to the provisions of the statute** [CIT vs. Garware Nylons Ltd.(212-ITR-242) (Bom).]

The proceedings of appeal work strictly as per the statutory provisions made in this regard. Therefore, , it is essential to understand these provisions in greater detail and know exactly what are the powers, rights and duties of the CIT (A) as well as the assessee while dealing with the appeals.

Appealable Orders-Section 246A

Section 246A of the Act lists down the category of orders, which can be appealed against. The List is an exhaustive list and not an inclusive list.

Accordingly, if any order does not find place in any of the clauses of section 246A, the same becomes a non appealable order and the assessee has to exercise certain other options to protect himself against such order.

Majority of the orders with which we deal in our day to day life are appealable. However, it would be interesting to note the appealability or otherwise of few of the orders as under:

<u>APPEALABLE ORDERS (Illustrative list)</u>	<u>NON-APPEALABLE ORDERS (Illustrative list)</u>
Orders giving effect to an appellate order Section wise detail of such orders are given under various Subsections of Sec. 246A	Order levying interest u/s 234A, 234B, or 234C in a case where there is no other grievances arising from the order.- alternate remedy- waiver petition before the CIT
Order denying the rectification of mistakes apparent from the records.	Order imposing interest u/s. 220(2)- alternate remedy- waiver petition before the CIT.
A protective assessment order [Lalludas Children Trust vs. CIT (251-ITR-50)) Guj.)] However, normally Protective assessment orders are dealt as Non-Appealable.	Order of revision u/s. 264- alternate remedy-writ petition before the High Court.
Order passed in reassessment proceedings.	Order of the commissioner passed u/s. 273A rejecting the application for waiver of Penalty- alternate remedy- writ petition before the High Court.

Appeal against the order under section 154 wherein interest under section 244A is reduced is maintainable.

-Progressive Construction Seenaiah & Co. vs. (IT (2003)851TD27) (HYD)

APPEAL IN CASE OF AN AGREED ASSESSMENT

The issue whether an appeal can be preferred in the case of an agreed assessment is not free from doubt.

The Bombay High Court in the case of Rameshchandra & Co. vs. CIT (169-ITR-375) (Bom.) has held that when the additions are made on the basis of the assessee's own admissions, the assessment can not be subjected to appeal. A similar view has been expressed by the Allahabad High Court in the case of sterling Machine Tools Vs CIT (123-ITR-181)(All.)

As against this, the Punjab and Haryana High Court in the case of Chhatmull Agarawal vs. CIT (115-ITR-694) (Punj) has held that an agreed assessment can be subjected to appeal. The statutory right of appeal can not be taken away from the assessee since he has consented to the additions/disallowances at the time of the assessment. Under the Act, there is no provision for withdrawal of the statutory right to appeal.

In view of the conflicting decisions, the maintainability or otherwise of an appeal in such a situation will largely depend on the facts of each case. It seems that it is difficult to contend that the appeal can be preferred in a case of admission made by the assessee due to the decision of the Bom, HC in the case of Rameshchandra & Co. However keeping in mind the statutory right of appeal, it seems that the appeal can not be denied in a case where the addition/disallowance are agreed by an assessee during assessment proceedings with a view to settle the matter and buy peace of mind.

Section- 248- Appeal by person denying liability to deduct tax u/s. 195

Section 248 of the act deals with appeal in a case where under an agreement or arrangement, tax deductible on any income, other than interest u/s. 195 is to be borne by the payer and such payer claims that no tax was required to be deducted on such income. In such a situation, the section provides that the payer shall first pay the tax deductible on such income. If the CIT (A) issues a declaration as aforesaid, then the tax deposited by him will be refunded to him.

SECTION -249-FORM OF APPEAL AND LIMITATIONS

Section 249(1) An appeal to the CIT (A) shall be in Form No. 35. Appeal shall be accompanied by appeal fees prescribed as under:

APPEAL FEES FOR CIT (A)

SITUATION	AMOUNT(Rs.)
If Total income as per assessment order is 1,00,000/- or less	250.00
If Total income as per assessment order is more than 1,00,000 but Less than 2,00,000/-	500.00
If Total income as per assessment order is more than 2,00,000/-	1000.00
If the subject matter of appeal is not covered by above	250.00

The above appeal fees are based on assessed income exclusive of agriculture income.

Documents to be filed with the Appeal form

- Form No. 35 along with statement of facts and grounds of appeal in duplicate.
- Receipted challans for the payment of Appeal Fees in original.
- Copy of the order appealed against (In case of appeal against the penalty order, also enclose a copy of the relevant assessment order).
- Original Notice of Demand

Important points to Remember:

I Form No. 35 should be filled up in a very neat and clean manner.

Ii Address of the appellant and address where the notice of appeal is requested to be served may vary. Address where the notice is requested to be delivered must be written carefully and properly. If the notice sent by registered post at the same address is sent back as undelivered, the CIT (A) may reject the appeal.

Iii Section, sub-section and clause under which the appeal is preferred should be mentioned clearly.

IV Grounds of appeal should be written in a very simple language.

V There should be separate ground for each issue.

Vi Grounds of appeal should be serially numbered.

Section 249(2)-Time Limit for filing appeal

As per section 249(2), an appeal shall be preferred within 30 days of the date of service of notice of demand in the case of an appeal against an assessment or penalty or of the intimation or any order sought to be appealed against. In the case of an appeal u/s. 248, the same shall be preferred within 30 days of the payment of tax.

Where the assessment order was served on a person who was not an authorized agent of the assessee and later on the assessee applied for and obtained a copy of the assessment, it was held that time limit for filing the appeal should be reckoned from the date on which the assessee obtained the copy of assessment order and notice of demand and not from the earlier date of the service of the assessment order.

-CIT VS. PREM KUMAR RASTOGI (1980) 124 ITR 381 (AII)

APPEAL SENT BY POST

In a case where the appeal is sent by post, then the date of filing will be the date on which the appeal is delivered to the office of the CIT (A) and not the date on which it is handed over to the postal authorities. This is because under the general law, the post office acts as an agent of the sender and not that of addressee.

Section 249 (3)- Condonation of delay in filing appeal

Section 249(3) enables the CIT (A) to admit an appeal after the examination of the time limit of 30 days if he is satisfied that the appellant had sufficient cause for not presenting it within the time limit prescribed.

In case of an appeal filed beyond the period of 30 days, it is recommended that the same shall be accompanied by a petition for condonation of delay explaining the reasons for the delay.

In appropriate cases, it is also advisable to file an affidavit confirming the reasons for the delay. As far as possible an attempt shall be to explain the reasons for each and every day's delay in filing the appeal.

The words sufficient cause shall be interpreted liberally with a view to advance the cause of justice. The provision conferring right of appeal should be construed in a reasonable, practical and liberal manner [Mela Ram and Sons vs. CIT (29-ITR-607) (SC); CIT vs. Grafik India (194-ITR-645) (SC)].

If the appellant has acted diligently then normally the delay gets condoned. However if the delay is caused due to negligence on the part of the appellant, it become difficult to get the delay condoned.

Where the reason for delay in filing first appeal is attributed to negligence or inaction on the part of tax consultant and there is no malafide imputable to the assessee the delay can be condoned.

-Shakti Clearing Agency (P) Ltd. vs. ITO (2003) 127TaxMAN

Condonation of delay

The delay in filing the revision was caused mainly due to fault of the lawyer who did not inform the assessee. The delay caused due to negligence of assessee's counsel. In these circumstances it would be hard to penalize the assessee for fault of the lawyer Delay for five years in filing revision condoned.

-Padam Sen Agarwal vs. CST (1983) UPTC-1135 (SC)

Appeal related to Exparte assessment

Service of notice; important concept

Where the appeal relates to ex-parte assessment u/s 144 and service of notice is one of the Grounds of appeal, it should be properly looked into whether the notice was served in the manner as prescribed under section 282 of the IT Act.

It is for the department to prove that service of notice was made in accordance with provisions of the Act. -**Shambhu Dayal Gupta vs. CIT (1997) UPTU 215 (ALL)**

It is evident that valid service of notice on the assessee is necessary for making valid assessment. If it is not served personally on the assessee. It is to be shown that same was served on an authorized agent of the assessee or an adult member of family who was or could be deemed to be authorized to receive notice on behalf of the assessee. An assessment made without service of notice can not be sustained. (**Satish Chand Varshney vs. ITO Chandausi ITA no. 3825 & 3826/Del "SME" Bench Delhi.**)

Section-249 (4)-payment of tax on Returned Income before the appeal

Section 249 (4) provides that no appeal shall be admitted unless the appellant has paid the tax due on **the returned income** before filing of the appeal. This is a very important part of appeal proceedings and one has to be extra careful on this front. If the tax on the returned income is not paid before the filing of the appeal, the appeal is not likely to be admitted. Section 249(4) is mandatory and there is no remedy available against the operation of the said section.

If the Tax is not paid before the filing of the appeal, then legally the CIT (A) is empowered to dismiss the appeal. However, if the tax is paid before the final date of hearing of the appeal, then normally the CIT (A) allows the appeal to be heard and decides the same on merit.

In a case where no return is filed the assessee should pay tax of an amount equivalent to the amount of advance tax payable by him before filing an appeal.

There is no condition that interest if any u/s. 234 A/B/C should also be paid before the appeal could be admitted.

Section 249(4) applies to appeals against assessment as well as appeal against penalty.

The provision of Section 249(4) however applies to appeal before CIT(A) only and do not apply for filing appeal before the ITAT.

Section-250-Procedure of Appeal

Section 250 of the act deals with the procedures in an appeal proceeding. As per the section, the CIT (A) shall give a notice in writing fixing a date of hearing to both the appellant and also the assessing officer. The assessee or his authorized representative is having a right to be heard at the time of the hearing of the appeal. Similarly right is made available to the assessing officer or his authorized representative to be heard however, normally in practice, only the appellant appears in the hearing.

No right is available to the assessing officer to be heard in the appeals under the wealth tax Act.

Adjournments in the appeal hearing

The CIT (A) is having power to grant adjournments either suo motto or on an application made by the assessee for adjournments. Normally the adjournments are granted provided the reasons are genuine.

It is suggested that one should not seek unnecessary adjournments since it may hurt the interest of the appellant in various manner.

Further Inquiries And Remand Reports etc

The CIT (A) may make further inquiries or ask the AO to make the necessary inquiries and give the report of the same. The powers of the CIT (A) are quasi judicial and they have to be exercised judicially.

If the CIT (A) arbitrarily refuses to make inquiries in a deserving case, his action is open for correction by the higher authorities. [*Smt. Prabhavati S. Shah vs. CIT (213-ITR-1) (Bom.)*].

If the CIT (A) calls for a remand report from the assessing officer, then a copy of the remand report shall be forwarded to the appellant before acting on the remand report. The assessee shall have a right to controvert any findings of the remand report.

Normally it is seen where the appellant puts a ground of appeal that the AO had not provided an opportunity in a particular matter, it becomes necessary for the CIT (A) to call for Remand Report.

Additional Grounds before the CIT(A)

As per the provisions of sub- section (5) of section 250, the CIT (A) can allow any additional grounds of appeal to be raised by the appellant at the time of hearing.

However, the CIT (A) has to be satisfied that there was a reasonable cause for not including the additional grounds in the original memorandum of appeal. The decision to admit or reject the additional grounds shall be taken in a judicious manner and not in an arbitrary manner.

The CIT (A) normally allows the additional ground to be taken up since it promises the basic purpose of advancement of justice without any damage to the opposite side. Justice should not be denied on technicalities {*Jute Corporation of India Ltd. vs. CIT 207-ITR-1010 (Guj)*; *Hindustan Construction Co. vs. CIT (208-ITR-291) (Bom)*}.

Appeal Order

Sub-section(6) of section 250 provides that the order of the CIT (A) has to be in writing and the same has to be a speaking order giving reasons for the decision on all the issues raised in the appeal.

For any of the issues resulted from the appellate order an application for rectification u/s. 154 can be made to CIT(A).

Time Limit for disposal of the appeal

As per sub-section (6A), it is recommended that the appeal filed may be heard and decided within one year from the end of the financial year in which the appeal is filed. However, this is an advisory limit and not strictly mandatory. Further the appellate order shall be issued within 15 days of last hearing.

The order to be communicated

The CIT (A) is required to communicate the order passed by him to the assessee A.O. and to the chief Commissioner or Commissioner on disposal of the appeal.

Section-251-powers of the CIT (A)

Section 251 of the acts deals with the powers of the CIT (A) while disposing off an appeal before him. The powers of the CIT (A) are co-terminus with that of the assessing officer and accordingly he can do everything which an assessing officer can do while making an assessment. Similarly he can not do something which an assessing officer can not do.

As per section 25(1), while deciding an appeal against an order of assessment, the CIT (A) may either-

- confirm
- reduce
- **enhance** or
- annual the assessment

Similarly while deciding an appeal against the levy of penalty, the CIT (A) may either-

- confirm such order or
- cancel such order
- Vary it so as to either **enhance** or reduce the penalty.

Power of Enhancement of CIT (A)

As can be seen from the section 251, the CIT (A) has powers to enhance the income or the penalty in an appeal before him. **These powers of the CIT (A) can not be however exercised without giving appropriate opportunity to the assessee of being heard against such enhancement.**

The principal of natural justice will have to be followed if the CIT (A) wishes to make the enhancement.

This include the procedures like proper notice, proper opportunity of being heard, filling of additional evidences, rebutting of the evidences relied on by the CIT (A) for such enhancement, cross examination of witnesses if any etc.

CIT (A) is not bound by the scope of the appeal before him and may go into all the matters covered by the assessment in the particular case. His powers are not confined to matters considered by the assessing officer but it covers the entire assessment proceedings within its ambit [CIT vs. Nirbheram Daluram (224-ITR-610) (SC); Cit vs. Ahmedabad Crucible co. (206-ITR-574) (Guj.)].

However at the same time, it is held by the supreme court in the case of CIT vs. Shapoorji Pallonji Mistry (44-ITR-891) (SC) **that the CIT (A) can not discover a new source of income which is not considered by the assessing officer. This decision has been subsequently followed in the case of CIT vs. Union Tyres (240-ITR-556) (Del.) and many other decisions.**

Both the above sets of decision work in different areas altogether. On analysis of both the sets of the decisions it can be said that **the CIT (A) does not have power to make assessment at all.**

The CIT (A) has powers to make enhancement in respect of such items where the concerned item was under consideration either expressly or impliedly in the assessment proceedings

CIT(A) can not validate an invalid assessment in the grab of enhancement

If the original assessment is itself invalid for whatever reasons, then the CIT (A) can not make enhancement in such case since he can not validate an originally invalid assessment.

Is it possible to recall an ex-parte order.

CIT(A) has some residuary powers conferred upon him u/s. 251(1) wherein he is competent to recall his order passed ex-parte on an application made to him by the appellant.

Filing of additional Evidence before the CIT (A)- Rule 46A

Powers of the CIT (A) are very wide and he can take whatever action which an assessing officer can take, when it comes to admitting of additional evidence before the CIT (A), the powers gets altered to a considerable extent and the same are governed by the Rule 46A of the Income-Tax Rules,1962.

The primary purpose of Rule 46A is to put a fetter on the tendency of the assessee of not filing the basic evidences before the assessing officer and brings it on records subsequently at the time of the appellate proceedings. Rule 46A lays down various restrictions as under.

Rule 46A

The appellant shall not be entitled to produce before the CIT (A) any evidence other than the evidence produced by him during the assessment proceedings except in the following circumstances:

- (a) Where the assessing has refused to admit evidence which ought to have been admitted; or
- (b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the assessing officer; or
- (c) Where the appellant was prevented by sufficient cause from producing before the assessing officer any evidence which is relevant to any ground of appeal; or
- (d) Where the assessing officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

As per sub-rule (4) of Rule 46A, the CIT (A) can direct the production of any document, or the examination of any witness to enable himself to dispose off the appeal. This can be done by the CIT (A) either on his own or on a request from the assessing officer.

As such it can be seen that the admission of additional evidence is based on the above basic criteria. The power shall be used judicially. If prima facie, the evidence is required to decide a particular case, then the CIT (A) should admit the same [Smt. Prabhavati s. shah vs. CIT (231-ITR-144) (pat.)TM].

The procedural lapses and technicalities should not be used to defeat the just claim of an assessee [Taylor Instruments co. (India) Ltd. vs. CIT (198-ITR-1) (Del.)].

The CIT(A) shall not admit any additional evidence unless the AO has been allowed a reasonable opportunity –

- a) To Examine a Document or Evidence or to cross-examine the witness produced by the appellant or
- b) To produce further evidence to counter the additional evidence produced by the appellant

Care to be taken regarding additional evidences

- 1) File maximum possible evidence before the assessing officer. If some important evidence is not available at the time of the assessment proceedings, then the fact shall be intimated to the assessing officer vide a letter that the evidence is sought and it will be filed at the earliest.
- 2) Keep an office copy of all the correspondence filed with the assessing officer and also keep copy of all the evidence in office file.
- 3) If any additional evidence is to be filed, then ensure that the same is filed along with an application under Rule 46A explaining the reasons for not filing the same before the assessing officer.
- 4) The additional evidence is filed in **duplicate** so as to enable the CIT (A) to forward a copy of the same for the verification of the assessing officer.

It is also advisable to bring the fact of filing the additional evidence in **duplicate** into writing before CIT (A).

In a case of appeal against an ex-parte assessment the entire paper book produced before CIT (A) becomes additional evidence and therefore requires submission in duplicate.

- 5) If any additional evidence is filed as per the direction of the CIT (A), then this fact shall be clearly mentioned in the covering letter under which the evidence is filed.

Any order passed by CIT(A) granting relief to the appellant by admitting additional evidence but without giving a specific opportunity of being heard to the AO to rebut the same would not be sustainable.

Power of Assessing Officer to Grant Stay

If an assessee has presented an appeal u/s. 246A, the AO may u/s. 220(6) in his discretion treat the assessee as not being in default in respect of the amount in dispute in the appeal even though the time for payment has expired, as long as such appeal remains undisposed of.

- a) The power of AO u/s. 220(6) is quasi-judicial and coupled with a duty. It should be exercised reasonably and fairly and not arbitrarily or based upon matters extraneous or irrelevant. In exercising his power, the AO should not act as a mere tax-gatherer but as a quasi-judicial authority vested with power of mitigating hardship to the assessee. If the AO does not discharge his duty he may be compelled by a Writ under article 226. (*Vetcha Sree Rama Murthy vs. ITO (1956) 30ITR 252 AP*)

- b) The AO normally instead of granting stay till the disposal of appeal allows paying the demand in periodical instalments. The assessee may apply before Commissioner for getting complete stay of Recovery.
- c) CBDT vide circular no. 530 dated 06/03/1989 has laid down certain situations where the AO shall exercise his discretion to grant stay for recovery. Situations are :
 - I. Where conflicting decisions of different High Courts including the one of jurisdictional High Court exist and the department has not accepted the decision of jurisdictional High Court.
 - II. The demand in dispute relates to issues that have been decided by appellate authority in assessee's favour earlier.

In the above two situations the assessee will be treated as assessee not in default.

Calcutta High Court has laid down certain considerations which may be used as guidance by the AO for exercising his discretion in granting stay.

- i) Whether there is a prima facie case in favour of the assessee.
- ii) The amount of Tax and penalty involved in appeal
- iii) The capacity of assessee to pay the amount
- iv) Undue Hardship to the Assessee
- v) Nature of the security offered by the assessee

The AO has also got right to adjust the demand against the amount refundable to the assessee in different year.

Power of Appellate Authority to Grant Stay

The Following Points should be noted in this regard:-

- a) The power of the appellate authority to stay the recovery of the demand of dues which are the subject-matter of appeal pending before him is independent of the provisions of section 220(6). (*Prem Prakash Tripathy vs. CIT (1994) 208 ITR 461 All.*)
- b) It is not necessary that before invoking the power of the first appellate authority an assessee should approach the AO u/s. 220(6) or that the AO must reject the assessee's prayer for stay of the demand-(*Tin Mfg. Co. of India vs. CIT (1995) 78 Taxman 249 (All.)*).
- c) However, once the first appellate authority grants stay, there is no power in the Act authorizing the First appellate authority to review its order passed staying tax collection. (*A.P. Kuruvilla & Co. v. CBDt (1995) 214 ITR 183Ker.*)

APPEAL BEFORE THE INCOME TAX APPELLATE TRIBUNAL

The Income-Tax Appellate Tribunal (ITAT) is the second appellate authority to whom appeals can be filed against the order of the CIT (A). It is the ***final fact finding authority*** in the entire proceedings. The facts recorded in the order of the ITAT can not be challenged before the High Court or Supreme Court where only a substantial question of law can be contested by an assessee.

The ITAT is a very important forum in the appellate proceedings because it is the first independent body. The ITAT is a Quasi-Judicial authority governed by the Ministry of law and not the Ministry of Finance. Due to this independence of the ITAT, normally the decisions of the ITAT are non-biased.

There are different branches of ITAT like (a) Division Bench (b) SMC Bench (c) Third Member Bench and (d) Special Bench

Who can file an appeal before ITAT

An appeal to ITAT can be filed against the order of the CIT (A) by either of the aggrieved party i.e. the assessee or the assessing officer under the directions of the commissioner.

Appealable orders before the ITAT

- 1) Any order passed by the CIT (A) u/s. 154, 250, 271A or 272A of the Income Tax Act
- 2) Order passed by an assessing officer u/s. 115VZC (1) (Tonnage Tax in case of shipping companies)
- 3) Order passed by a commissioner u/s. 12AA or section 80G(5)(vi) or section 263 or section 271 or section 272A or order u/s. 154 amending the order u/s. 263
- 4) Order passed by a chief commissioner or a Director General or a Director under section 272A

Time Limit for filing an appeal

The appeal shall be filed before ITAT within 60 days of the date of communication of the order appealed against.

Condonation of Delay in Filing

Sub-section (5) of section 253 grants a power to the appellate tribunal to admit an appeal or permit the filing of a cross objection after the expiry of the time prescribed if it is satisfied that there was a sufficient cause for not presenting it within the prescribed time.

In a case where the appeal is filed after the expiry of the time limit, it is desirable that an application for condonation of the delay is filed along with the appeal itself. Further an affidavit explaining the reason for the delay shall also be filed along with the appeal papers.

Memorandum of cross objections

Once either of the party files an appeal before the ITAT, the ITAT will issue a notice to the respondent informing him that the appeal has been filed and will also forward a copy of the appeal memo and the grounds of appeal to the respondent.

On receipt of the aforesaid notice, the respondent can file a memorandum of cross objection in Form No. 36A within 30 days of the receipt of the notice.

The memorandum of cross objection can be filed against any part of the order decided against the respondent. **There is no fee for filing the memorandum of cross objection.** The cross objection filed is also treated as an appeal and is disposed off accordingly.

The cross objection need not be confined to the points taken by the opposite party in its appeal. The cross objection can be filed even if the respondent has independently filed appeal against the order of the CIT (A). The tribunal is having a power to permit filing of cross objection beyond the time prescribed if it is satisfied that there was sufficient cause for the delay in filing the same.

Appeal fees payable in the case of an appeal to ITAT by the assessee

Situation	Amount (RS.)
If the total income as per assessment order is 1,00,000/- or less	500.00
If the total income as per assessment order is more than 1,00,000/- but less than 2,00,000/-	1500.00
If the total income as per assessment order is more than 2,00,000/-	1% of the assessed income subject to maximum Rs. 10,000/-
If the subject matter of appeal is not covered by above	500.00

Note: The Appeal fee is payable on the basis of assessed income ignoring the relief allowed by CIT (A).

Grounds of appeal before the ITAT

Rule -8 of the income tax Appellate Tribunal Rules, 1963 reads as under:

“Every memorandum of appeal shall be written in English and shall set forth, concisely and under distinct heads, the grounds of appeal with no argument or narrative, and such grounds shall be numbered consecutively.”

Thus one has to take care that the grounds filed before the ITAT are-

- concise (brief)
- with appropriate headings
- Non –argumentative
- Duly numbered

Monetary Limit For Appeals To ITAT By The Department

With a view to avoid litigation in smaller cases, the Central Board of Direct Taxes issues instructions from time to time to the authorities not to file the appeal to the Income Tax Appellate Tribunal, in Cases where the tax amount involved is less than the Rs. 3 Lakh..

If, however, the department files appeal to the ITAT by ignoring the aforesaid instructions, then the department's appeal is not maintainable and the same can be dismissed by the ITAT in limine if the assessee's representative argues so at the time of the hearing [CWT vs. Executors of late D. T. Udeshi (189-ITR-319) (Bom.); CIT VS. Pithwa Engineering Works (276-ITR-565) (Bom.); CWT vs. S. Annamali (258-ITR-675) (Mad.); CIT vs. Zoeb y. Topiwala (284-ITR-379) (Bom.)]

Further, as per the decisions in the case of CIT vs. Mica Wood Pyt. Ltd. (170-Taxman - 256) (Del.), it has been held that the above monetary limits shall also equally to the amount of penalty. In view of this all those cases, where the departments files appeal to ITAT in cases involving penalty up to Rs. 3,00,000/- are likely to be dismissed.

The above limit of Rs. 3 Lakhs shall apply to each appeal separately and not jointly.

Additional Grounds at the time of the hearing before the ITAT

Rule-11 of the Income-Tax Appellate Tribunal Rules, 1963 deals with the procedure for grounds which may be heard during the course of the hearing of the appeal. On an analysis of the rule and also few of the judicial pronouncements, the following broad principles get emerged:

- Additional ground is generally not permitted except by the leave of the bench.
- The bench is competent to allow the appellant to raise additional grounds of appeal.
- Leave of the bench may be sought either in writing or by oral prayer(It is preferable if it is in writing and file well in advance)
- The scope of inquiry before the Tribunal can be wider than the points which are raised before the Tribunal. The Tribunal has the powers to allow additional points to be raised before it so long as they arise from the subject matter of the appeal. [Ahmedabad Electricity Co. vs. CIT (199-ITR-351) (Bom.)]
- As long as the additional grounds are in respect of the subject matter of the entire proceedings, they shall be allowed to be admitted by the bench. Where the tribunal is only required to consider a question of law arising from the facts which are on records, there is no reason for not allowing such additional grounds. [National Thermal Power Company Ltd. Vs. CIT (229-ITR-383) (SC)]

Filing of paper-book before the ITAT

Rule 18 of the Income-tax Appellate Tribunal Rules,1963 deals with the provisions regarding the filing of paper book before the ITAT. The rules in this regard are analyzed as under:

The paper book must be filed in duplicate containing all the papers duly numbered and also indexed. The same shall be filed at least one day before the date of hearing. Further one copy of the paper book shall be served through Registrar on the opposite party at least one week before the date of hearing. The Tribunal is having power to condone the delay in filing paper book in appropriate cases.

As per rule18(2) the tribunal may suo motu direct the preparation of a paper book in triplicate by and at the cost of the appellant or the respondent containing copies of such statements, papers and documents as it may considered necessary for the proper disposal of the appeal.]

All the papers of the paper book shall be certified as true copy either by the party filing the same or by its authorized representative. The paper book can not contain additional evidence not filed before the assessing officer or the appellate authority.

If one wants to file additional evidence, then the same are required to be filed by way of a separate paper book along with an application stating the reasons for filing such additional evidence and a paper to admit the additional evidence.

It is desirable to file the copies of the case laws which one want to rely on in support of its case if the same are not reported in ITR or ITD. The copies of the case laws shall be filed by way of a separate paper book. This can be filed during of the hearing.

Filing of additional Evidence before the ITAT

Rule 29 of the Income tax Appealed Tribunal Rules deals with production of additional evidence before ITAT. As per this rule, the parties to the appeal shall not be entitled to produce additional evidence before the tribunal. But the tribunal can call for any additional evidence on its own so as to enable it to pass appropriate order.

The Tribunal has powers to allow additional evidence if the Income-Tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce the necessary evidence. The Tribunal has to record the reasons for admitting the additional order.

Since the tribunal is the final fact finding authority, it normally allows the additional evidences to be admitted if there was a reasonable cause for not furnishing the same before the lower authorities. In appropriate cases, the tribunal may also set- a-side the appeal with the directions to the lower authorities to allow proper opportunity to adduce the necessary evidence and consider the matter a fresh.

However, one must remember that the powers to allow the additional evidence is purely discretionary and the tribunal will have to be convinced about the genuineness of the appellant and that there were genuine reasons for not filing the additional evidence before the lower authorities.

DRESS CODE FOR REPRESENTATIVES

The dress code for the authorized representative has been laid down by rule 17A of the Income-Tax Appellate Tribunal Rules, 1963. As per this rule the dress code for the authorized representative (other than a relative or a regular employee) is as under:

For 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 pyajams. The colour of the coat shall, preferably, be black.

For Female: Black coat over white or any other sober coloured saree.

NO POWER OF ENHANCEMENT AVAILABLE to ITAT

The best part of the appeal proceedings before the ITAT as compared to the CIT (A) is that the ITAT can not enhance the assessment or penalty levied/confirmed by the lower authorities.

This is due to the fact that the tribunal is an outside independent body and is not concerned with administration of the law but it is concerned with the adjudication of the law.

However, in an appeal under the Wealth-Tax Act, the Tribunal is having the power of enhancement.

Power of the ITAT to restore the Ex-parte Order

In a case where ITAT has passed an ex-parte order dismissing the appeal, the Appellant can file a misc. application together with a fee for Rs. 50/-.

The misc. application has to be filed in triplicate stating the reasons of non – presence from the part of the appellant. An affidavit from the appellant and the necessary documents in support of reasons would favour the appellant in restoration of appeal.

The ITAT may its own on the application of the appellant restore the appeal or may issue a notice for hearing of misc. application.