



# **Appellate Proceedings & E-filing of Appeal**

**H.C. MANIAR & Co.**



# Remedies available against order of the Assessing Officer

## Appeal to Commissioner of Income Tax(Appeal)

- First appeal in appealable cases shall lie with CIT (A)

## Revision by Commissioner of Income Tax u/s. 264

- The option for revision may be preferred, if the appeal is not filed or it has become time barred for filing.

*However, after filing an appeal before CIT(A), application for revision cannot be made to CIT or vice versa. Further, application for revision u/s. 264 cannot be made until the time for filing appeal has expired.*



# Hierarchy - Appeal to CIT(A)

Nature of Action	To whom it should be filed	Who can prefer?
First Appeal	Commissioner-(Appeals)	Assessee
Second Appeal	ITAT	Assessee/ AO
Appeals to High Courts	High Court	Assessee/ CIT
Appeals to Supreme Court	Supreme Court	Assessee/ CIT



## **Non-Appealable Order**

**Orders which are not specified under section 246-A are non appealable orders e.g.**

- Order of refusal to grant stay of demand.
- Order to levy interest u/s 234 A, 234 B, 234C.
- Certificate of lower deduction of TDS granted u/s. 197(1).
- Interest charged u/s. 220(2) till the demand is not paid.
- Orders passed u/s 264 rejecting Revision Petition.



## **Appeals which cannot be filed with CIT (A)**

**Appeals can be filed only with the Authorities superior to those passing the Order. As such, appeals in the following cases can be filed only with the ITAT:**

- An Order passed by the CIT u/s 12 AA, or 80 G (5) (vi)
- An Order passed by the CIT u/s 263 or u/s. 271 or an order passed by him u/s 154 amending his order u/s 263.
- Order passed by Chief Commissioner or Director General or a Director u/s 272 A - Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.



<b>Nature of Action</b>	<b>To whom it should be filed</b>	<b>Who can prefer?</b>
First Appeal	ITAT	Tax-payer
Appeals to High Courts	High Court	Tax-payer/ CIT
Appeals to Supreme Court	Supreme Court	Tax-payer/ CIT

No appeal is provided against the order of CIT passed u/s 264 but a writ-petition under Article 226 of the Constitution to the High Court is maintainable.



# Time Limit for filing of Appeal

The appeal shall be presented within 30 days of the following date, that is to say:

- Where the appeal relates to any TDS U/S 195(1), *“from the date of payment of tax.”*
- Where the appeal relates to any assessment or penalty; *“the date of service of the notice of demand.”*
- In other cases; *“the date on which such intimation of the order is served.”*



## Condonation of delay

- **Application for condonation** of delay must be made specifying that there was a **Sufficient Cause** for delay.
- The CIT(A) can condone delay in filing of appeal under section 249(3) if satisfied that delay was due to “sufficient cause”.
- The CIT(A) has **discretionary powers** of condonation which should be exercised judiciously.





## Appeal Fee

Particulars	Amount (Rs.)
<b>Assessed Income</b>	
Upto Rs. 1,00,000/-	250/-
Between Rs. 1,00,001/- to Rs. 2,00,000/-	500/-
Above Rs. 2,00,001/-	1,000/-
Cases not covered above	250/-

Total income determined at negative figure -“**Minimum fees**”  
[*Gilbs Computer Ltd. Vs. ITAT - 317 ITR 159(Bom)*]



# Enclosure with the Appeal filed Manually

- Form - 35 (In duplicate)
- Statement of Facts and Grounds of Appeal (In duplicate)
- Form of verification(In duplicate)
- Copy of order against which appeal preferred (In duplicate)
- Original & certified copy of notice of demand (u/s 156)
- Copy of challan for payment of Appeal Filing Fees
- Power of Attorney ( Optional )
- Court fees stamp (Re. 1 affixed on Form- 35)
- Covering letter addressed to the CIT (A)



# New Form No. 35

**“FORM NO. 35**  
(See rule 45)  
Appeal to the Commissioner of Income-tax (Appeals)

Personal Information		First Name	Middle Name	Last Name or Name of Entity	PAN				
		Flat/ Door/ Block No.			Name of Premises/ Building/ Village	TAN (if available)	Road/ Street/ Post Office		
		Area/ Locality			Town/City/District	State (Select)			
		Country (Select)	Pin Code	Phone No. with STD code/ Mobile No.	Emsil Address				
Order against which Appeal is filed		1				Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant	Assessment Year	Financial Year	Whether notices/ communication may be sent on email? Yes/ No
		2		Details of the order appealed against					
		a	Section and sub-section of the Income-tax Act,1961						
		b	Date of Order						
Pending Appeal		3		Income-tax Authority passing the order appealed against					
		4		Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellent with any Commissioner (Appeals)					Yes/ No
		4.1		If reply to 4 is Yes, then give following details. -					
		a	Commissioner (Appeals), with whom the appeal is pending						
		b	Appeal No. and date of filing of appeal						
		c	Assessment year/ financial year in connection with which the appeal has been preferred						
Appeal Details		5		Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred					
		6		If appeal relates to any assessment					
		a	Amount of Income Assessed (in Rs.)						
		b	Total Addition to Income (in Rs.)						
		c	In case of Loss, total disallowance of Loss in assessment (in Rs.)						
		d	Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.)						
		e	Amount of Disputed Demand (in Rs.) – Enter Nil in case of Loss						
		7		If appeal relates to penalty:					
a	Amount of penalty as per Order (in Rs.)								
b	Amount of penalty disputed in Appeal (in Rs.)								



Details of Taxes paid	8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full			Yes/No/ Not Applicable
	8.1	If reply to 8 is Yes, then enter details of return and taxes paid			
	a	Acknowledgement number			
	b	Date of filing			
	c	Total tax paid			
Details of Taxes paid	9	Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid			Yes/No/ Not Applicable
	9.1	If reply to 9 is Yes, then enter details			
		Tax Payments			
		BSR Code	Date of payment	Sl. No.	Amount
Details of Taxes paid	10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1)			
		BSR Code	Date of payment	Sl. No.	Amount
Statement of facts, Grounds of Appeal and additional evidence	11	Statement of Facts			
		Facts of the case in brief (not exceeding 1000 words)			
		List of documentary evidence relied upon			
	12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of rule 46A			Yes / No
	12.1	If reply to 12 is Yes, furnish the list of such documentary evidence			
Statement of facts, Grounds of Appeal and additional evidence	13	Grounds of Appeal (each ground not exceeding 100 words)			
		1.			
		2.			
		3.			
Appeal filing details	14	Whether there is delay in filing appeal			Yes/ No
	15	If reply to 13 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)			
	16	Details of Appeal Fees Paid			
		BSR Code	Date of payment	Sl. No.	Amount
	17	Address to which notices may be sent to the appellant			



# E-filing of Appeals

CBDT vide its press release dated 30-12-2015 mentioned that Electronic Filing of Appeal before CIT Appeals is Mandatory for persons who are required to file the return of income electronically.

The existing Form 35 for filing of first appeal is substituted by a new Form. The new format is more structured, objective, systematic, and aligned with the current provisions of the Income-tax Act.

Thereafter, vide Notification No.11/2016 dated 01/03/2016, Rule 45 of IT Rules, 1962 were amended and new Form 35 was introduced.



## **Form No. 35 shall be furnished in the following manner, namely:-**

(a) in the case of a person who is **required to furnish return of income electronically** under sub-rule(3) of rule 12,-


(i) by furnishing the form electronically under digital signature, if the return of income is **furnished under digital signature**;


(ii) by furnishing the form electronically through **electronic verification code** in a case not covered under sub-clause (i);


(b) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule (2) or in paper form.



# Procedure of E – filing of Appeal

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- [View Form 26AS \(Tax Credit\)](#)

### Login

User ID *	<input type="text"/>
Password *	<input type="password"/>
Date of Birth/Incorporation (DD/MM/YYYY) *	<input type="text"/> 
Captcha Code	<input type="text"/>
Image	  
Enter the number as in above image *	<input type="text" value="218370"/>
<input type="button" value="Login"/> <a href="#">Forgot Password?</a>	
New Users? <a href="#">Register Now</a>   <a href="#">Resend Activation Link</a>	
 <a href="#">e-Filing Login Through NetBanking</a>	

### Trouble Logging In?

- User ID for Tax Payee is PAN.
- Make sure there are no spaces in User ID or Password
- Passwords are case sensitive, make sure Caps Lock is not on



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  - 1 View Form 26AS (Tax Credit)
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- Upload Return
- e-File in response to Notice u/s 139(9)
- Change ITR Form Particulars
- Prepare and Submit Online Form (Other than ITR)**
- Upload Form BB (Return of Net Wealth)
- Response to Outstanding Tax Demand
- Upload Form 6 (for undisclosed foreign asset)

**IMPORTANT !!!**

Please make sure you have the correct Email ID and Mobile Number against your profile. These details are important and will be used for all communications.

To update the details, please go to the menu "Profile Settings/My Profile"





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### Prepare and Submit Form Online (Other than ITR)

PAN

Form Name \*

Assessment Year \*

Click here to download the DSC Utility

#### Steps to Generate Signature File :

- Download the "ITD e-Filing DSC Management Utility"
- Generate the signature file. Follow the instructions.
- Attach the generated signature file.

Attach the Signature file \*

Continue

Select

Select

3CF-I

3CF-II

3CF-III

8

9

9A

10

10A

10G

15CA

35

40C

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49C

52A


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56D



56FF

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[Prepare and Submit Form Online \(Other than ITR\)](#)

PAN

Please select a Form Number.

Form Name \*

[Click here to download the DSC Utility](#) 

 **Steps to Generate Signature File :**

- Download the "ITD e-Filing DSC Management Utility".
- Generate the signature file. Follow the instructions in the Utility.
- Attach the generated signature file.

Attach the Signature file \*  No file chosen

**General Instructions**

1) This utility shall be used for generating signature file using Digital Signature Certificate (DSC).

Generated Signature file can be used in e-Filing for the below functionalities

- A. Register DSC
- B. Reset Password using DSC
- C. Filing of Return / Other Forms
  - ▶ Upload XML (ITR / Other Forms XML generated using offline utilities)
  - ▶ Submit Online ITR/Form (for Online ITR1, 4S and other forms)
- D. Bulk upload (Income Tax return/Other Forms (Zip file) by ERIs / TAN users)

2) Guidelines to use the utility are as below-

- Choose the appropriate 'tab' and provide the details.
- In case of Upload XML / Bulk Upload, select the XML/ZIP to be uploaded using 'Browse button'.
- Select the type (pfx / usb token) and attach the DSC
- Click on 'Generate Signature File' button. The signature file is generated and saved with the extension '.signature'
  - ▶ In case of 'Upload XML' and 'Bulk Upload', the signature file is saved in the same path of XML/ZIP file. Signature file is valid only for the selected XML/ZIP file.
  - ▶ In case of 'Register DSC' and 'Submit Online ITR/Form', signature file may be saved on the desired path (user can select the path) and can be used.



## Register/Reset Password using DSC

Enter e-Filing User ID \*

AMSPM7884L

Enter PAN of the DSC (Registered in e-Filing) \*

AMSPM7884L

### DSC Details

Select the type of Digital Signature Certificate \*

.pfx file  USB token

Select your certificate keystore file(.PEX/P12) \*

Browse DSC file

Enter the password for your private key \*


Input Password

Select USB token Certificate \*

HARDIK CHANDRAKANT MANIAR ▼


Generate Signature File



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PAN

Form Name \*

[Click here to download the DSC Utility](#) 

 **Steps to Generate Signature File :**

- Download the "ITD e-Filing DSC Management Utility".
- Generate the signature file. Follow the instructions in the Utility.
- Attach the generated signature file.

Attach the Signature file \*  AAECA8257...signature



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PAN

Form Name \*

35

### Select CIT(A)

Please select the relevant CIT(A) from the drop down.

CIT (A) 22, Mumbai

Please check the checkbox if CIT(A) you wish to appeal is not present in drop down

[Continue](#) [Cancel](#)



**FORM NO. 35**  
[See rule 45]  
**Appeal to the Commissioner of Income-tax (Appeals)**  
**Designation of the Commissioner (Appeals)**

Submit  Save Draft  Exit



Instructions Form 35 Verification Attachments

(a) There are four sections in the form:

1. Instruction,
2. Form-35,
3. Verification, and
4. Attachments (must not exceed 50mb in size/ must be in pdf/zip format)

(b) Read all the Instructions carefully before beginning to fill Form-35

(c) In Form-35 there are 16 para where information is required to be filled including statement of facts and grounds of appeals

(d) Name and PAN of the appellant is pre-filled and rest of the paras are required to be responded by filling/selecting appropriate facts/options

(e) The following attachments are mandatorily required:

- (i) Copy of Challan for appeal fee paid
- (ii) Copy of order appealed against
- (iii) Notice of demand

5. After fully satisfying that form-35 has been properly filled and all required attachments have been duly attached, it can be submitted, saved as draft for filing later.



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**FORM NO. 35**

[See rule 45]

**Appeal to the Commissioner of Income-tax (Appeals)**



[Instructions](#) [Form 35](#) [Verification](#) [Attachments](#)

**Personal Information**

First Name	Middle Name	Last Name or Name of Entity*	PAN*
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Flat/ Door/Block No *			TAN (if available)
<input type="text"/>			<input type="text"/>
Area/ Locality *	Town/ City/ District *	State *	Country *
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Pincode *	Mobile No *	STD code	Phone No.
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Email Address *	Whether notices/ communication may be sent on email?*		
<input type="text"/>	<input type="text"/>		

**Order against which Appeal is filed**

1	Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant*	Assesement Year	<input type="text" value="2010-11"/>
		Financial Year	<input type="text" value="Select"/>

**Details of the order appealed against**





Details of the order appealed against			
2	a	Section and sub-section of the Income-tax Act, 1961*:	<input type="text" value="██████████"/>
	b	Date of Order*	<input type="text" value="██████████"/>
	c	Date of service of Order / Notice of Demand *	<input type="text" value="██████████"/>
3	Income-tax Authority passing the order appealed against *		<input type="text" value="████████████████████"/>
Pending Appeal			
4	Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellant with any Commissioner (Appeals) *		<input type="text" value="No"/>
Appeal Details			
5	Section and sub-section of the Income-tax Act, 1961 under which the appeal is preferred *		<input type="text" value="246A"/>
6	If appeal relates to any assessment ?*		<input type="text" value="Not Applicable"/>
	a	Amount of Income Assessed (₹)	<input type="text"/>
	b	Total Addition to Income (₹)	<input type="text"/>
	c	In case of Loss, total disallowance of Loss in assessment (₹)	<input type="text"/>
	d	Amount of Addition/ Disallowance of Loss disputed in Appeal (₹)	<input type="text"/>
	e	Amount of Disputed Demand (₹)- Enter Nil in case of Loss	<input type="text"/>
7	If appeal relates to penalty ?*		<input type="text" value="Yes"/>
	a	Amount of penalty as per order (₹)	<input type="text" value="██████████"/>
	b	Amount of penalty disputed in Appeal (₹)	<input type="text" value="██████████"/>
Details of Taxes paid			
8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full *		<input type="text" value="Yes"/>
8.1	If reply to 8 is Yes, then enter details of return and taxes paid		
	a	Acknowledgement number	<input type="text" value="████████████████████"/>



8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full *	Yes
---	---	-----

8.1	If reply to 8 is Yes, then enter details of return and taxes paid	
a	Acknowledgement number	<input type="text"/>
b	Date of filing	<input type="text"/> <input type="text"/>
c	Total tax paid	<input type="text"/>

9	Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid*	Not Applicable
---	---	----------------

10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1)
----	--

**Statement of facts, Grounds of Appeal and additional evidence**

<b>Statement of Facts</b>					
11	<table border="1"> <tr> <td>Facts of the case in brief (not exceeding 1000 words) *</td> <td><input type="text"/></td> </tr> <tr> <td>List of documentary evidence relied upon</td> <td><input type="text"/></td> </tr> </table>	Facts of the case in brief (not exceeding 1000 words) *	<input type="text"/>	List of documentary evidence relied upon	<input type="text"/>
Facts of the case in brief (not exceeding 1000 words) *	<input type="text"/>				
List of documentary evidence relied upon	<input type="text"/>				


12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A *	No
----	--	----

12.1	If reply to 12 is Yes, furnish the list of such documentary evidence	<input type="text"/>
------	--	----------------------

13	Grounds of Appeal(each ground not exceeding 100 words)*
----	---

Sl. No.	Relevant section (s) of IT/Act	Issue	Ground of Appeal
1	<input type="text"/>	<input type="text"/>	<input type="text"/>



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**FORM NO. 35**  
[See rule 45]  
**Appeal to the Commissioner of Income-tax (Appeals)**

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**VERIFICATION**

I,

, the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place\*

Date:\* \_\_\_\_\_



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## FORM NO. 35

[See rule 45]

### Appeal to the Commissioner of Income-tax (Appeals)

Submit  Save Draft  Exit

Instructions Form 35 Verification Attachments

#### Attachments

##### Notes :

a) All attachments should be in Pdf or Zip format only.

b) Each attachment should not exceed 5 Mb.

##### Attachment :

1	Copy of order appealed against	<input type="button" value="Choose File"/>	AML Penlaty Order.zip
2	Notice of demand	<input type="button" value="Choose File"/>	AML Demand Notice.zip
3	Any other attachment	<input type="button" value="Choose File"/>	No file chosen

Submit  Save Draft  Exit



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### Form Filed Successfully

Form 35 has been filed and the Transaction ID is: **[REDACTED]**

An e-mail confirming the successful submission of your Form alongwith the Acknowledgment number has been sent to **[REDACTED]**



# Practical Difficulties in filling appeal electronically

- In Para - 4 of new Form No. 35, details of pending appeals are required to be given such as CIT(A) with whom appeal is pending, Appeal No. and date of filing of appeal etc. - Here it is assumed that the same representative is filing the appeal which may not be the case.
- Generally at CIT(A) stage, appeal nos are not assigned at the time of filing of appeals as done at ITAT level. Rather, appeal no are intimated through issuance of notice of hearing.
- While preparing layout for the form it is assumed that there is only one appeal pending.



# Practical Difficulties in filling appeal electronically

- Form No. 35 contains new column No. 12 & 12.1 in which details of additional documentary evidence in terms of Rule 46A is to be furnished. It is desirable at the appeal filling stage to decide whether any additional evidence needs to be filed. This, however, does not take away the appellants right to produce such evidence at the later stage of the appeal.
- **Special characters** are not accepted.
- Statement of Facts are **restricted to 1000 words**.



## Issues to be considered while drafting Statement of Facts in Form 35

- There is a difference between Statement of Facts and the Written Submission;
- Keep the Statement of facts brief and include only the relevant facts in it;
- Key arguments, reliance of judgments etc., may not be included in this
- Statement of facts should highlight each and every fact, since there is only one opportunity for filing the statement of facts.





## Issues to be considered while drafting Grounds of Appeal in Form 35

- Grounds of appeal should be simple, concise, aptly worded, and serially numbered issue-wise.
- 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”.
- In cases of appeals involving rejection of books of account, reassessments, Section 263 matters etc., take extreme care in drafting grounds and take various alternative legal as well as factual grounds
- 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 appeal.



**STATEMENT OF FACTS**

As per grounds of Appeal

**GROUND OF APPEAL**

As per separate sheet attached herewith

[Redacted] Corporation  
.....  
Partner

**FORM OF VERIFICATION**

I, [Redacted], do hereby declare that what is stated is true to the best of my information and belief.

Place : Gandhidham

Date : 23.04.2013

Partner

[Redacted] Corporation  
.....  
Partner



## Section 250: Procedure in Appeal

- 1) **Notice to AO and Assessee** fixing a day and place of hearing.
- 2) Following shall have right to be heard:
  - a) the appellant in person or through his AR
  - b) the AO or his AR.
- 3) CIT (A) has powers to adjourn the hearing from time to time.
- 4) Before disposing of the appeal, the CIT (A) has power to make further inquiry or may direct the AO to further inquire and report i.e. remand report.
- 5) Additional ground may be allowed, at the time hearing of an appeal, if satisfied that the omission was not willful or unreasonable.



## Section 250: Procedure in Appeal

- The order of the CIT(A) shall be in writing stating the point for determination, the decision thereon and the reason for the decision.
- The CIT(A) may, as far as possible, **may** hear and decide the appeal **within a period of one year** from the end of the financial year in which appeal is filed.
- The CIT(A) on disposal; communicate a copy of order to the assessee and to the Chief Commissioner or Commissioner **“but not to the AO”**
- *As per CBDT Instruction No. 1489 dated 03-11-1982 the CIT(A) should pass appellate in all cases order within 20 days after the final hearing and in all duly heard cases before relinquishing charge on transfer/proceedings on leave.*



## **Powers of the Appellate Authority:-**

- CIT(A) can “Enhance” but cannot “Set aside / restore back”. He can also levy penalty under section 271(1)(c);
- Tribunal can “Set aside / Restore back”, but cannot enhance;
- Powers of CIT(A) are co-terminus with that of the AO and can thus improve the order / correct the defects committed by the AO



# Power of Enhancement

- The CIT(A) can enhance assessment in respect of matters which could be considered by ITO, but which he failed to consider. However, the CIT(A) has to restrict himself to the material before the ITO.
- Where the A.O. on the basis of material before him had failed to make due enquiry, the CIT(A) has powers to cause such enquiry, and make the enhancement.
- Conversely where there is no material whatsoever before the AO for making the enquiry for the purpose of making addition, then the CIT (A) would not be with in his competence to make the enhancement.



## Production of additional evidence (Rule 46A):

- Where the **AO refused** to admit the said evidence which ought to have been admitted.
- Where **appellant was prevented by sufficient cause** from producing evidence called upon by the AO.
- Where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal.
- Where AO passed the impugned **order without giving sufficient opportunity** to appellant to adduce evidence relevant to any ground of appeal.



# Remand proceedings in first appeal

- Filing of additional evidences in appeal will for all probability result in Remand proceedings;
- CIT(A) may remand even otherwise, if deemed fit;
- Place all the evidences on record at this stage for improving the case





# How to ensure that the case is not subjected to reopening, rectification or revision?

- Place all the relevant evidences on record, even if not called for;
- Make proper disclosure in the written submissions you file;
- Make it a point to have self explanatory written submission;
- Paper Book should ideally be indexed, numbered and bound



# General misconception

➤ *Small Addition :-*

May result in huge addition in subsequent years.

➤ *Case of mistake apparent on record (u/s. 154)*

Can we file appeal.

➤ *Agreed additions*

It becomes repetitive in nature and may result in prosecution.

➤ *Addition without demand*

Wiping of loss carried forward.

➤ *Time limit for filling of appeal elapsed*

Condonation.



# Filing Stay petition after appeal

- File a stay-petition with the Assessing Officer in respect of demand within 30 days of the date of service of the order.



# Limitations

- No power to review except power of rectification u/s. 154.
- No power to consider validity of Act or Rules
- **Commissioner (Appeals) has no power to set aside an order and refer the case back to AO for fresh assessment [w.e.f 01-06-2001]**
- Commissioner (Appeals) cannot award costs to parties.
- If the appeal order is against the AO, then he has a right to go in appeal with ITAT.



- The revised limits for filing appeal by Department before Appellate Authorities as specified vide *Circular No. 21/2015 dated 10-Dec.- 2015* are given hereunder:

<b>Appeals in Income Tax Matters</b>	<b>Tax effect - Monetary Limit (In Rs.)</b>
Before ITAT	10,00,000/-
Before High Court	20,00,000/-
Before Supreme Court	25,00,000/-



# Presentation before the CIT(A)

- 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.
- Examine whether any additional evidence is to be taken. If so, draft an appropriate application under Rule 46 - A.
- File the application under Rule 46-A alongwith documentary evidence in support of your claim as far as possible.



## Presentation before the CIT(A)

- Prepare paper book **serially numbered 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 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.



# Presentation before the CIT(A)

- Reliance be placed on the decisions of the Apex Courts, Jurisdiction High Court and ITAT.
- Revenue authorities have to follow decision of Jurisdictional High Court.
- Care need to be taken while placing reliance on case laws. Examine the cases for and against. As far as possible, distinction be made between the cases which are against.
- Distinguish the cases relied upon by the AO.





# Presentation before the CIT(A)

- Maintain calm and be peaceful and confident.
- Have proper knowledge of all 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.



# Recent issues - deemed income

- *Section 68* - Cash Credit - If any sum is found credited in the books of accounts of the assessee - identity, capacity of the creditor and genuineness of the transaction needed to be justified.
- *Amendment* - In case of Pvt. Ltd. companies if share application money is received - source of the source has to be explained.
- If this stage is crossed .....



## Recent issues - deemed income

- *Section 56(2)(viib)* – If consideration received for shares is > fair market value – deemed to be income of the company.
- If consideration received for shares is < fair market value – deemed to be income of the share holder.
- Fair market value has to be calculated as per Rule 11UA of the Act.

<i>the fair market value of unquoted equity shares =</i>	$(A-L)$	$x (PV)$
	$(PE)$	



where,

*A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;*

*L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely: –*

- i. the paid-up capital in respect of equity shares;*
- ii. the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- iii. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- iv. any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*
- v. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- vi. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

*PE = total amount of paid up equity share capital as shown in the balance-sheet;*

*PV = the paid up value of such equity shares;*



# Recent issues - deemed income

## *Section 56(2)(viib) -*

The Act itself provides for the solution in Sub-clause (b) - the fair market value of the unquoted equity shares determined by a **merchant banker** or an **accountant** as per the Discounted Free Cash Flow method.



## Recent issues – Specified Domestic Transactions

### Meaning of specified domestic transaction.

**92BA.** For the purposes of this section and sections 92, 92C, 92D and 92E, “specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction, namely: –

- (i) **any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;**
  - (ii) any transaction referred to in section 80A;
  - (iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;
  - (iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;
  - (v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
  - (vi) any other transaction as may be prescribed,
- and where the aggregate of such transactions entered into by the assessee in the previous year **exceeds a sum of five crore rupees.]**



## Recent issues – Specified Domestic Transactions

If covered under Specified Domestic transactions

- 1) As per **Instruction 15/2015 dated 16.10.2015** – If specified domestic transaction is reason under CASS – Refer matter to TPO, if not the reason for selection – wait until further instruction.
- 2) As per **Instruction No. 3/2016 dated 10.03.2016** – The power of deciding the arms length price (ALP) is withdrawn from the AO and matters will be referred to TPO compulsorily.
- 3) If one of the reason for selection is TP/ SDT -.> refer to TPO



## Recent issues – Specified Domestic Transactions

- (a) where the AO comes to know that the taxpayer has entered into international transactions or specified domestic transactions or both but the taxpayer has either **not filed the Accountant's report** under Section 92E at all or has not disclosed the said transactions in the Accountant's report filed;
- (b) where there has been a **transfer pricing adjustment of Rs. 10 Crore or more in an earlier assessment year and such adjustment has been upheld** by the judicial authorities or is pending in appeal; and
- (c) where **search and seizure** or survey operations have been carried out under the provisions of the Income-tax Act and findings regarding transfer pricing issues in respect of international transactions or specified domestic transactions or both have been **recorded by the Investigation Wing or the AO.**





## Recent issues – Specified Domestic Transactions

Things to be kept in mind :-

In case of specified domestic transactions

- 1) TP documentation as per Rule 10D
- 2) TP Study Report.
- 3) Details mentioned in Form No. 3CEB –
- 4) Method of calculating Arms Length Price
  - Comparable uncontrolled price (CUP) method;
  - Resale price method (RPM);
  - Cost plus method (CPM);
  - Profit split method (PSM);
  - Transactional net margin method (TNMM);
  - Such other methods as may be prescribed.



# Thanking You....

**Hardik Maniar,**

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