

Appellate Proceedings & E-filling of Appeal



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.



Nature of Action	To whom it should be filed	Who can prefer?	
First Appeal	ITAT	Tax-payer	
Appeals to High	High Court	Tax-payer/	
Courts		CIT	
Appeals to	Supreme Court	Tax-payer/	
Supreme Court		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.)
Assessed Income	250 /
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)

	First	Name	Middle Name	*			
	I Last	1 · maile	Middle Name	Last Name or Name of I	Entity	PAN	
Personal Information						TAN (if available)	
	Flat	Flat/ Door/ Block No. Area/ Locality		Name of Premises/ Buil	Name of Premises/ Building/ Village Road/ Street/ Post Office Town/City/District State (Select)		
	Area			Town/City/District			
	Country (Select) Pin Code		Pin Code	Phone No. with STD Email Address code/ Mobile No.			
					Whether no	otices/ communication may be s	ent on email? Yes/No
	1	Assessm	ent year in connection	with which the appeal is prefe	erred Enter	Assessment Year	
- hich		nnancia.	year in case appeal is	filed against an order where	assessment	Financial Year	
- 6			ot relevant			rinanciai i ear	
Order against which Appeal is filed	2		of the order appealed ag				
ne a		a Sec	ction and sub-section of	the Income-tax Act, 1961			
Ap		b Dat	te of Order				
ō		c Date of service of Order / Notice of Demand					
	3	Income-tax Authority passing the order appealed against					
	4	Whether	r an appeal in relation	to any other assessment yes	ar financial	year is pending in the case of	the Yes/No
			ellant with any Commissioner (Appeals)				
=	4.1		to 4 is Yes, then give following details				
Pending Appeal	-			with whom the appeal is pen	ding		
4		b Ap	peal No. and date of file	ing of appeal			
1				year in connection with whi		has been preferred	
100		d Inc	come-tax Authority pass	ing the order appealed again	st		
\$3ta			ction and sub-section of ssed	f the Income-tax Act, 1961, u	inder which ti	he order appealed against has be	een
1			ite of such Order				
	5			Income-tax Act,1961 under w	which the appe	eal is preferred	
1	5		al relates to any assessm				
1 40			mount of Income Assess				
2		b To	otal Addition to Income	(in Rs.)	or Con Dan		
Appeal Details	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						
1 2							
न्द	7		al relates to penalty:				
	a Amount of penalty as per Order (in Rs.)						
	b Amount of penalty disputed in Appeal (in Rs.)						



4	S	Where a return has been	filed by the appellant for the assessn	ent year in connecti	on with which the appeal	Yes/No/Not	
	-		on income returned has been paid in i			Applicable	
- 12	8.1		enter details of return and taxes paid				
		a Acknowledgement number					
		b Date of filing					
-		c Total tax paid					
	9	amount of advance tax as	en filed by the appellant for the asse s per section 249(4)(b) of the Income	essment year, whether- tax Act, 1961 has be	er an amount equal to the	Yes/No/Not Applicable	
	9.1	If reply to 9 is Yes, then Tax Payments	enter details				
		BSR Code	Date of payment	SI. No.	Arr	nount	
		Total					
		deposited under section	Date of payment	Sl. No.	Ar	nount	
				04.110.	740	IOLESIC .	
	11	Statement of Facts					
DC.			f (not exceeding 1000 words)				
ride		List of documentary ev					
Appeal and additional evidence	12			Yes / No	No		
Pa	12.1	If reply to 12 is Yes, fur	mish the list of such documentary evid	dence			
Buc	13	Grounds of Appeal (e	ach ground not exceeding 100 words)				
bea		1.					
A P		2.					
		3.					
	14	Whether there is delay				Yes/No	
	15		ster the grounds for condonation of de	elay (not exceeding 5	00 words)		
sils	16	Details of Appeal Fees					
details		BSR Code	Date of payment	SL No	. А	mount	
	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 <u>new Form</u>. 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.

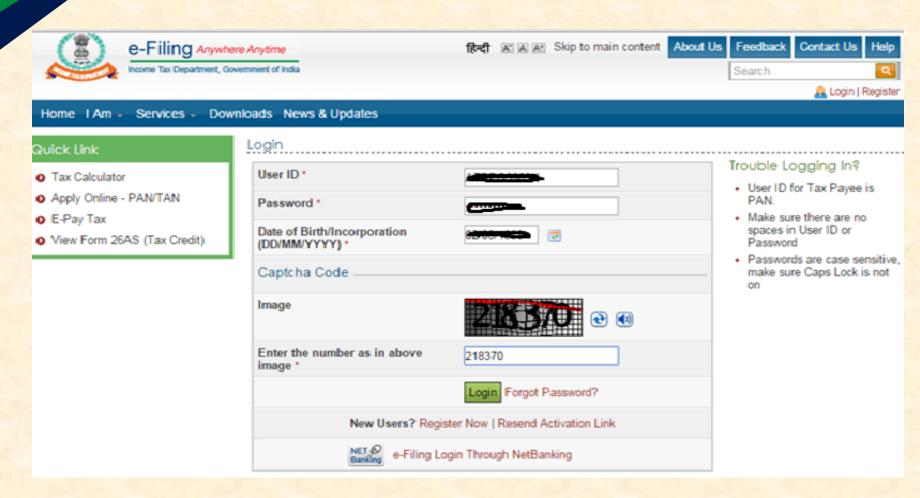


Form No. 35 shall be furnished in the following manner, namely:-

- (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

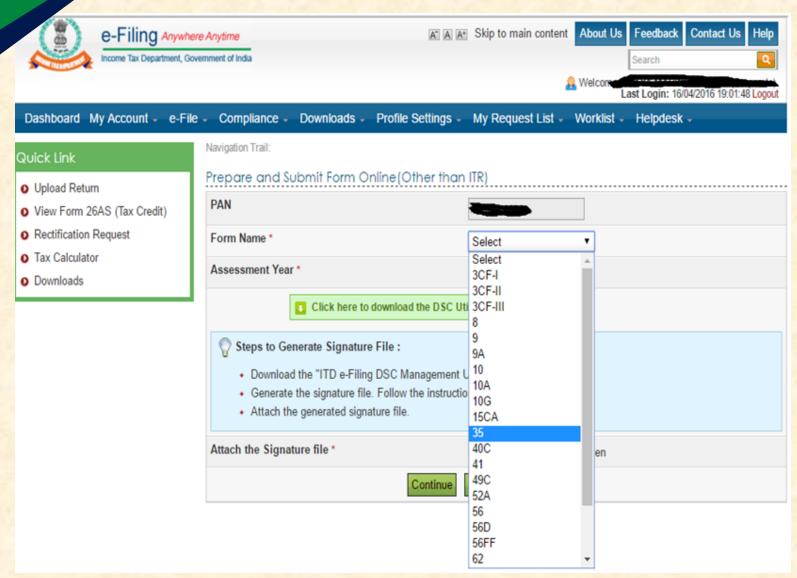






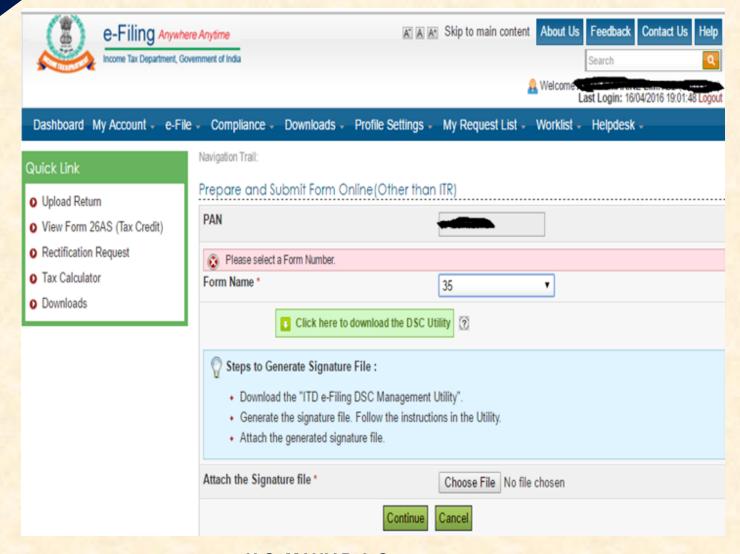
Quick Link	Upload Return			
Upload Return View Form 26AS (Tax Credit)	e-File in response to Notice u/s 139(9) Change ITR Form Particulars			
Rectification Request	Prepare and Submit Online Form(Other than ITR)			
Tax Calculator	Upload Form BB (Return of Net Wealth)			
Downloads	Response to Outstanding 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. The 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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ITD e-Filing DSC Management

Register/Reset Password using DSC Upload XML Submit ITR / FORM Online Bulk Upload

General Instructions

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

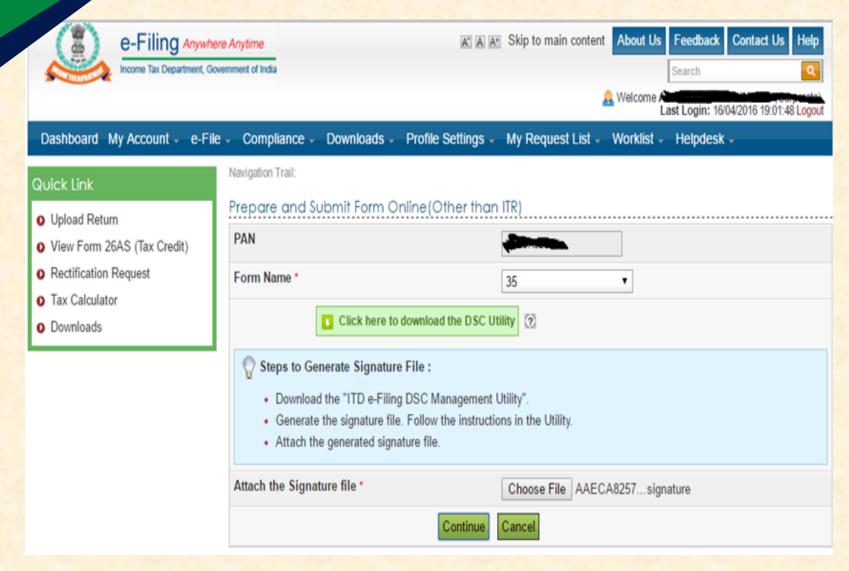
Generated Signature file can be used in e-Filing for the below functionalities

- A. Register DSC
- 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.



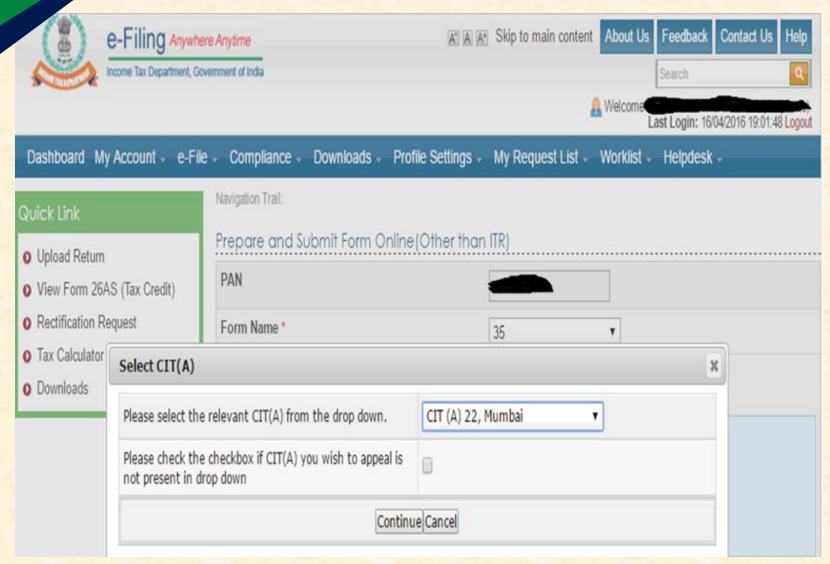
Register/Reset Pa	ssword using DSC
Enter e-Filing User ID *	AMSPM7884L
Enter PAN of the DSC (Registered in e-Filing) *	AMSPM7884L
DSC D	Details
Select the type of Digital Signature Certificate *	
Select your certificate keystore file(.PFX/P12) *	Browse DSC file
Enter the password for your private key *	Input Password
Select USB token Certificate *	HARDIK CHANDRAKANT MANIAR ▼
Generate Si	gnature File





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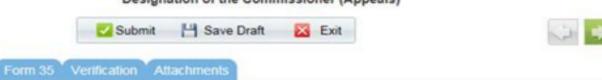
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Instructions

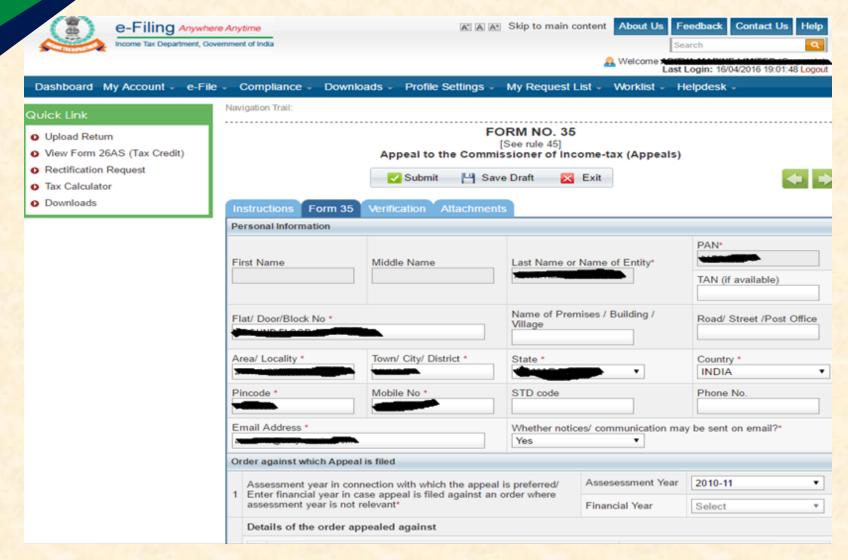
FORM NO. 35

[See rule 45]
Appeal to the Commissioner of Income-tax (Appeals)
Designation of the Commissioner (Appeals)



- (a) There are four sections in the form:
 - Instruction.
 - Form-35.
 - Verification, and
 - 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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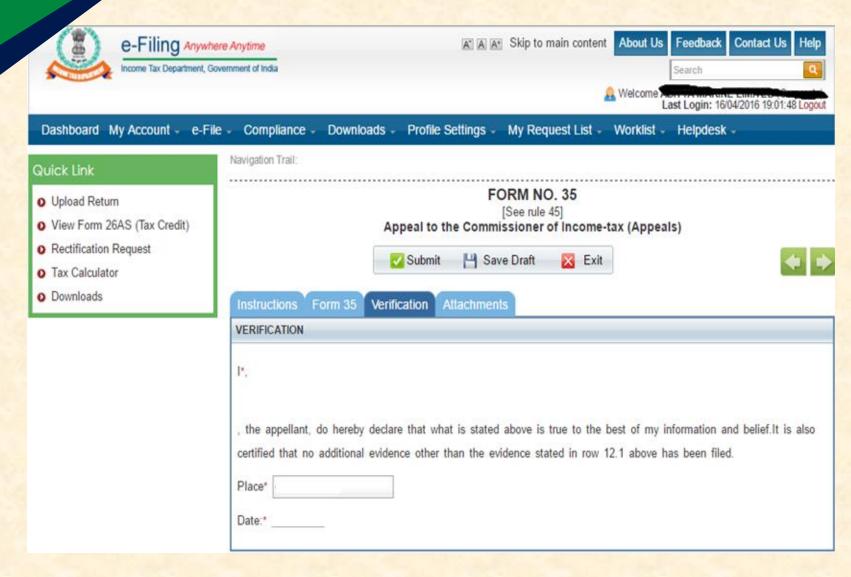


	-		the ender consoled engines							
	Deta	alls of th	the order appealed against							
	a	Section	n and sub-section of the Income-tax Act, 1961*:		•					
2	b	Date of	of Order*							
	С	Date of	of service of Order / Notice of Demand *							
3	Inco	ncome-tax Authority passing the order appealed against *								
er	nding	Appeal	ıl .							
			appeal in relation to any other assessment year/ financial year is appellant with any Commissioner (Appeals) *	s pending in the	No ▼					
pp	peal	Details								
5	Sec	tion and	d sub-section of the Income-tax Act, 1961 under which the appea	l is preferred *	246A					
5	If a	ppeal re	elates to any assessment ?*		Not Applicable ▼					
	a	Amount	nt of Income Assessed (₹)							
	b	Total Ad	ddition to Income (₹)							
	С	In case	of Loss, total disallowance of Loss in assessment (₹)							
	d	Amount	nt of Addition/ Disallowance of Loss disputed in Appeal (₹)							
	е	Amount	nt of Disputed Demand (₹)- Enter Nil in case of Loss							
r	If a	ppeal re	elates to penalty ?*		Yes ▼					
	a	Amount	nt of penalty as per order (₹)							
	b Amount of penalty disputed in Appeal (₹)									
)et	etails of Taxes paid									
3			eturn has been filed by the appellant for the assessment year in appeal is filed, whether tax due on income returned has been pa		Yes ▼					
8.	1	If reg	ply to 8 is Yes, then enter details of return and taxes paid							
a Acknowledgement number										



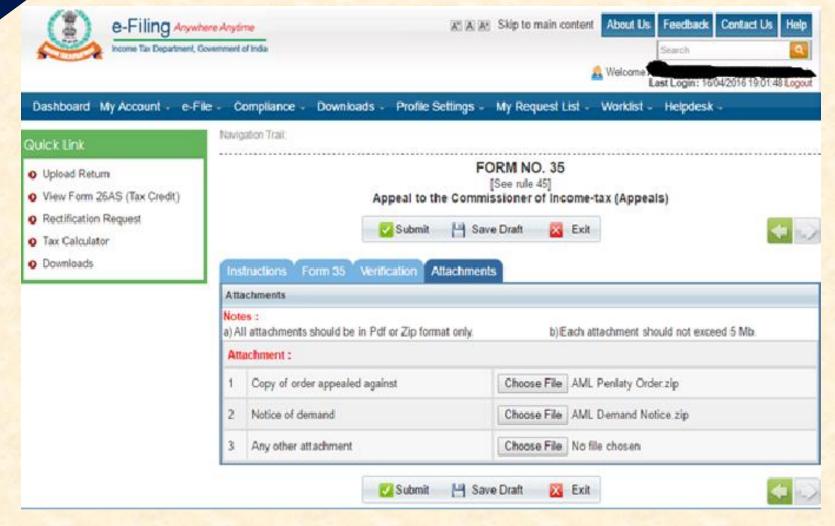
8			eturn has been filed by the appella appeal is filed, whether tax due or			n with	Yes	•
8.	1	If re	eply to 8 is Yes, then enter details	of return and taxes	s paid			
	a Acknowledgement number							
		ь	Date of filing		: =			
		С	Total tax paid					
9	ame	ount e	return has been filed by the appel qual to the amount of advance tax has been paid*				Not Applicable	•
10			eal relates to any tax deductible u tax deposited under section 195(1		f the Income-tax Act,1	961 and	borne by the deductor,	
Stat	eme	ent of fa	acts, Grounds of Appeal and additi	onal evidence				
	S	tateme	ent of Facts					
11		Facts of the case in brief (not exceeding 1000 words) *			<u>-</u> <u>-</u> .		1	-
	Li	List of documentary evidence relied upon						
12	th	ne evid	r any documentary evidence other ence produced during the course o ings before the Income-tax Author n filed in terms of Rule 46A •	of No.	*			
12.			to 12 is Yes, furnish the list of such ntary evidence					
13		Groun	ds of Appeal(each ground not exc	eeding 100 words)	*			
	SI. Relevant section (s) of IT/Act Issue					Ground o	of Appeal	
1		1		F	_	į.		





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Search

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Quick Link

- Upload Return
- View Form 26AS (Tax Credit)
- Rectification Request
- Tax Calculator
- Downloads

Navigation Trail:

Form Filed Successfully

Form 35 has been filed and the Transaction ID is: 3

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



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 filling 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.

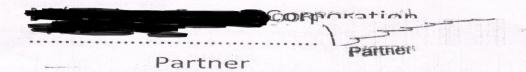


STATEMENT OF FACTS

As per grounds of Appeal

GROUNDS OF APPEAL

As per separate sheet attached herewith



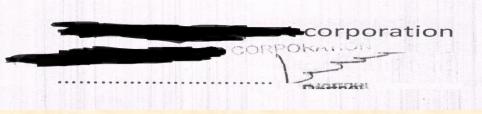
FORM OF VERIFICATION

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

Place : Gandhidham

Date: 23.04.2013

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:

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



- > 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.



- ➤ 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.



- ➤ 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.



- 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.

the fair market value of unquoted equity shares =	(A-L)	x (PV)
	(A-L) (PE)	

CA

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.



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.]



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



- (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**.

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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....

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