



Reply to Income Tax Notices under Faceless Regime

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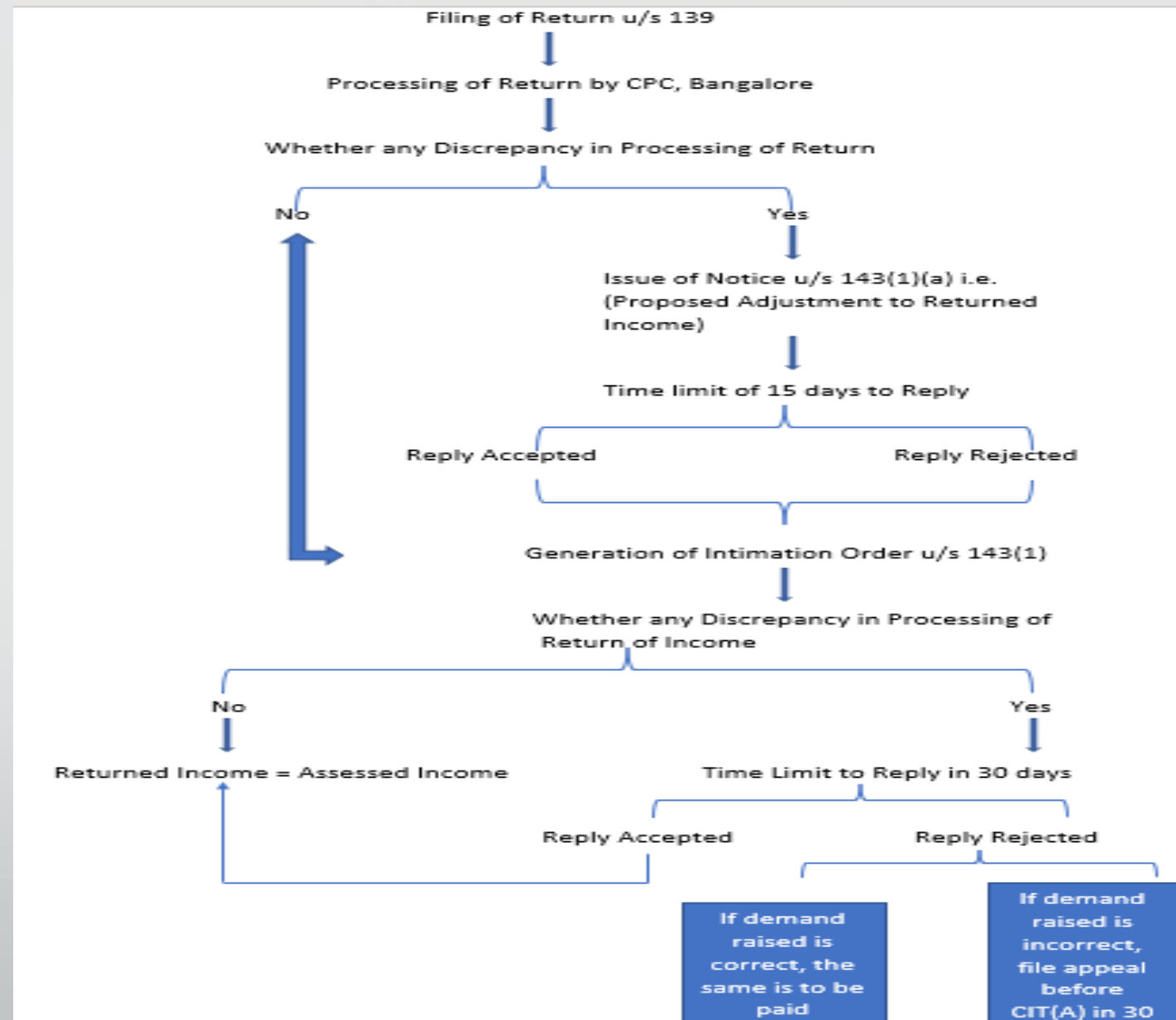
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Reply to Notices under the following scenarios:

1. Intimation Order u/s 143(1)
2. Rectification application u/s 154
3. Income Tax Proceedings:
 - a. Under the Faceless Scheme
 - b. Central Circle
 - c. Proceedings u/s 148
4. Appeal with CIT (Appeals)
5. Appeal with Income Tax Appellate Tribunal (ITAT)

1. Intimation Order u/s 143(1) of Income Tax Act, 1961:

- Return filed shall be processed in the following way:
- Total Income/Loss shall be computed after following adjustments
- Arithmetical Error
- An Incorrect claim as appears from any information in return
- Loss disallowance is return filed after due date
- Disallowance of expenditure in audit report but not in return
- Disallowance of deduction u/s 10AA, 80-IA/IB/IC/ID/IE if return filed after due date
- Interest & Fee u/s 234F



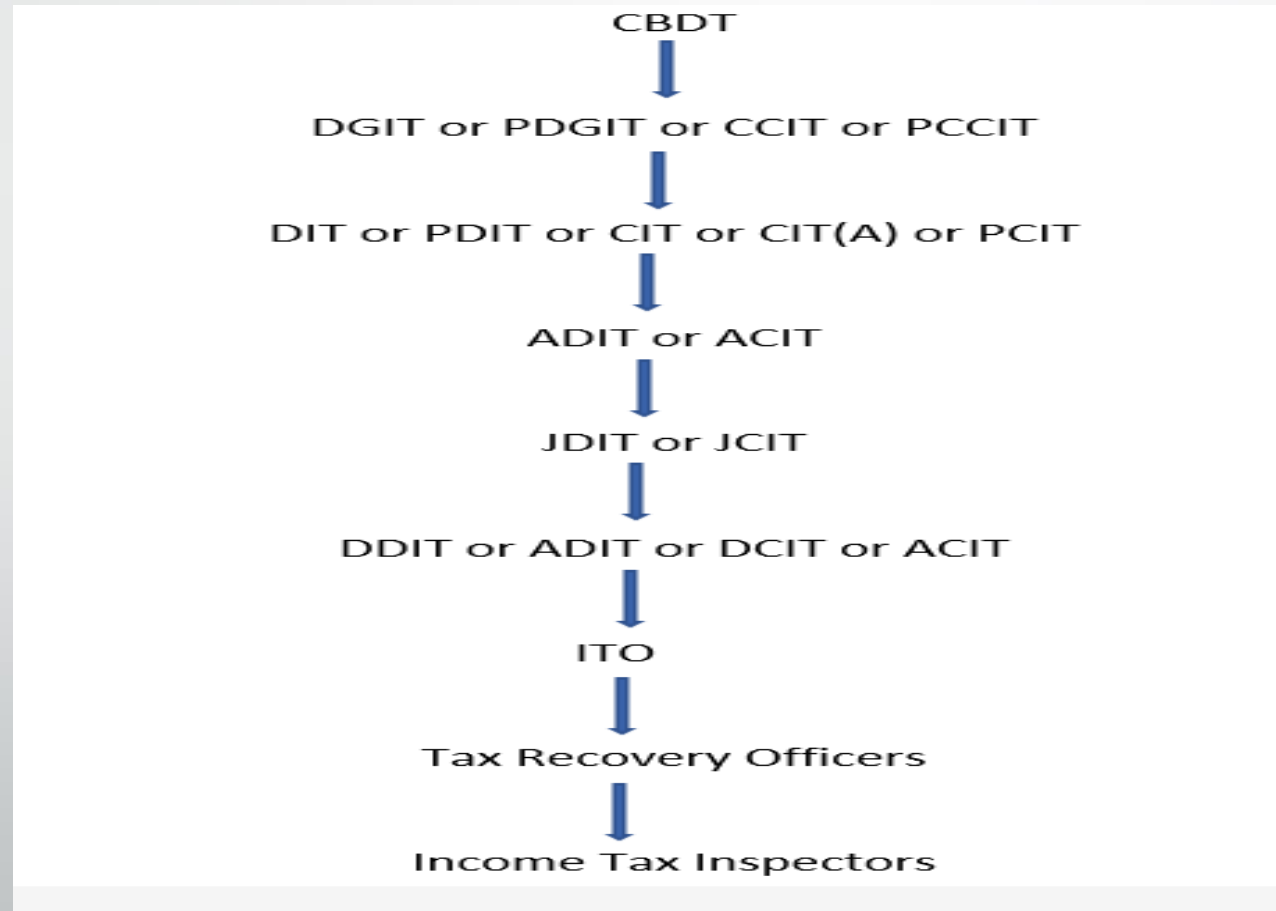
Discrepancies raised in Intimation Order U/s 143(1):

- Incorrect disclosure in ITR for disallowances made in Tax Audit Report (E.g. Disallowance made in Tax Audit Report u/s 40 but disallowed in ITR u/s 37)
- Disallowance reported in Tax Audit Report but not disallowed in ITR [E.g. Disallowance u/s 36(1)(va)]
- Tax Credit Mismatch as per 26AS and as claimed in ITR.
- Difference in Income reported as per ITR and as available in 26AS/ AIS/ TIS.
- Disclosure of Contingent Liability in Tax Audit report
- Set off of Losses/ Unabsorbed depreciation when opted for Sec 115BAA in ITR

Section 154: Rectification of Mistake

- Any IT Authority may rectify any mistake apparent from records:
 - Any Order
 - Intimation/Deemed Intimation u/s 143(1), TDS & TCS Intimation
 - ITAT rectifies mistake u/s 254 & not u/s 154 as it is not an IT Authority
 - Refusal to make rectification is also done by passing order u/s 154
- IT Authority may rectify Suo moto or on application from assessee or by AO if authority is CIT(A).
- Limit of Application.: 4 Years from the end of FY in which order sought to be amended was passed
- Time Limit of order u/s 154: 6 Months from end of the month in which appl. is received.

Income Tax Officers Hierarchy:



VARIOUS ASSESSMENTS UNDER THE INCOME TAX LAW

- Every taxpayer has to furnish the details of his income to the Income-tax Department.
- These details are to be furnished by filing up his return of income. Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department.
- The Income Tax Department examines the return of income for its correctness. The process of examining the return of income by the Income Tax department is called as "Assessment". Assessment also includes re-assessment and best judgment assessment under section 144.

Major Assessments under Income e-Tax

Under the Income-tax Law, there are four major assessments given below:

- Assessment under section 143(1), i.e., Summary assessment without calling the assessee.
- Assessment under section 143(3), i.e., Scrutiny assessment.
- Assessment under section 144, i.e., Best judgment assessment.
- Assessment under section 147, i.e., Income escaping assessment.

Assessment under section 143(3)

- The objective of scrutiny assessment is to confirm that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner.
[As amended by Finance Act, 2022] To confirm the above, the Assessing Officer carries out a detailed scrutiny of the return of income and will satisfy himself regarding various claims, deductions, etc., made by the taxpayer in the return of income.

Procedure of assessment under section 143(3)

- If the A.O considers it necessary to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, then he will serve on the taxpayer a notice requiring him to attend his office or to produce or cause to be produced any evidence on which the taxpayer may rely, in support of the return.
- To carry out assessment under section 143(3), the Assessing Officer shall serve such notice in accordance with provisions of section 143(2) and the same should be served within a period of 6 months from the end of the F.Y in which the return is filed.
- The taxpayer or his representative (as the case may be) must appear before the A.O and make relevant submission.
- After hearing/verifying such evidence and taking into account the details taxpayer may produce and such other evidence as the Assessing Officer may require and after taking into account all relevant materials which he has gathered, the A.O shall, by an order in writing, make an assessment of the total income or loss of the taxpayer and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Authorities to conduct the faceless assessment

- For the purpose of faceless assessment, the CBDT is empowered to set up the following centres and units by specifying their respective jurisdiction:
 - (a) National Faceless Assessment Centre (NFAC);
 - (b) Assessment Units (AU);
 - (c) Verification Units (VU);
 - (d) Technical Units (TU); and
 - (e) Review Units (RU).

Time-limit for Assessment U/s 143(3)

- Within 9 months from end of the assessment year in which income was first assessable.
[Applicable for assessment year 2021-22 and onwards]
- **Note:**
 - If reference is made to TPO, the period available for assessment shall be extended by 12 months.
 - If return has been furnished under section 139(8A), the order of assessment shall be passed within 9 months from the end of financial year in which such return was furnished.

Assessment under section 144

- **As per section 144, the Assessing Officer is under an obligation to make an assessment to the best of his judgement in the following cases:-**
 - a. If the taxpayer fails to file the return required within the due date prescribed u/s 139(1) or a belated return u/s 139(4) or a revised return u/s 139(5), or an updated return u/s 139(8A).
 - b. If the taxpayer fails to comply with all the terms of a notice issued u/s 142(1).
 - c. If the taxpayer fails to comply with the directions issued u/s 142(2A).
 - d. If after filing the return of income the taxpayer fails to comply with all the terms of a notice issued u/s 143(2), i.e., notice of scrutiny assessment.
 - e. If the assessing officer is not satisfied about the correctness or the completeness of the accounts of the taxpayer or if no method of accounting has been regularly employed by the taxpayer.

Procedure of assessment under section 144

- If the conditions given above calling for best judgment are satisfied, then the A.O will serve a notice on the taxpayer to show cause why the assessment should not be completed to the best of his judgment.
- No notice as given above is required in a case where a notice under section 142(1) has been issued prior to the making of an assessment under section 144.
- If the A.O is not satisfied by the arguments of the taxpayer and he has reason to believe that the case demands a best judgment, then he will proceed to carry out the assessment to the best of his knowledge.
- If the criteria of the best judgment assessment are satisfied, then after taking into account all relevant materials which the A.O has gathered, and after giving the taxpayer an opportunity of being heard, the A.O shall make the assessment of the total income or loss to the best of his knowledge/judgment and determine the sum payable by the taxpayer on the basis of such assessment.

Time-Limit for assessment U/s 144

- Within 9 months from end of the assessment year in which income was first assessable.
[Applicable for assessment year 2021-22 and onwards]
- **Notes:**
 - If reference is made to TPO, the period available for assessment shall be extended by 12 months.
 - If return has been furnished under section 139(8A), the order of assessment shall be passed within 9 months from the end of financial year in which such return was furnished.

Assessment under section 147

- If any income of an assessee has escaped assessment for any A.Y, the A.O may, subject to the new provisions of sections 148 to 153, assess or reassess such income and also any other income which has escaped assessment and which comes to his notice subsequently in the course of the proceedings, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for such A.Y.

Procedure for Assessment U/s 147

Issue of Notice:

- The A.O shall serve on the assessee a notice u/s 148 along with a copy of the order passed under clause (d) of section 148A, requiring him to furnish within return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year.

Circumstances in which notice can be issued

- Notice is required to be issued only when information with the Assessing officer suggests that the income chargeable to tax has escaped assessment. Prior approval of specified authority is also required to be obtained before issuing such notice by the Assessing Officer.
- However, no such prior approval is required if the Assessing Officer has passed an order under Section 148A(d) with prior approval of the specified authority stating that the income is escaping assessment

Income has escaped Assessment

In cases other than Search, Survey or Requisition

- The information suggesting that the income chargeable to tax has escaped assessment i.e. any information flagged in the case of the assessee for the relevant A.Y as per the 'Risk Management Strategy' formulated by the CBDT from time to time; [As amended by Finance Act, 2022]
- Any audit objection to the effect that the assessment in the case of the assessee for the relevant A.Y has not been made in accordance with the provisions of the Income-tax Act;
- Any information received under an agreement referred to in section 90 or section 90A;
- Any information made available to the Assessing Officer under the Scheme notified under section 135A; or
- Any information which requires action in consequence of the order of a Tribunal or a Court.

Income has escaped Assessment

In search, survey or requisition cases

- In search, survey or requisition cases initiated or made or conducted, on or after 1st April 2021, it shall be deemed that the A.O has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the 3 A.Ys immediately preceding the A.Y relevant to the P.Y in the following cases:
 - (a) A search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, on or after the 1st day of April 2021, in the case of the assessee;
 - (b) A Survey is conducted u/s 133A in the case of the assessee;
 - (c) The A.O is satisfied, with the prior approval of PCIT or CIT, that any money, bullion, jewelery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April 2021, belongs to the assessee; or
 - (d) The A.O is satisfied, with the prior approval of PCIT or CIT, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Procedure before Issuance of Notice u/s 148:

- The A.O shall be required to follow the below procedure as laid down in Section 148A before issuing a notice under new Section 148 in cases other than search, survey or requisition.

Conducting Inquiry 148A(a):

The A.O shall conduct an enquiry, if required, with the prior approval of specified authority, concerning the information which suggests that income chargeable to tax has escaped assessment.

Granting an opportunity of being heard 148A(b):

The A.O shall provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than 7 days but not exceeding 30 days from the date on which such notice is issued, or such time, as may be extended by him based on an application in this behalf, as to why a notice under new Section 148 should not be issued based on information which suggests that income chargeable to tax has escaped assessment in his case for the relevant A.Y and results of an enquiry conducted, if any.

Procedure before Issuance of Notice

- **Consider Reply of Assessee 148A(c):**

The A.O shall consider the reply furnished by the assessee, if any, in response to the show-cause notice issued by AO.

- **Passing an Order 148A(d):**

The A.O shall decide, based on material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under new Section 148, by passing an order, with the prior approval of specified authority, within 1 month from the end of the month in which the reply of the assessee is received by him, or where no such reply is furnished, within 1 month from the end of the month in which time or extended time allowed to furnish a reply expires

Section 148A not Apply on Following Cases

- The above provision shall not apply if the case where:
 - (a) A search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, on or after the 1st day of April 2021, in the case of the assessee;
 - (b) A Survey is conducted under section 133A in the case of the assessee;
 - (c) The A.O is satisfied, with the prior approval of PCIT or CIT, that any money, bullion, jewelery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April 2021, belongs to the assessee;
 - (d) The A.O is satisfied, with the prior approval of PCIT or CIT, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April 2021, pertains or pertain to, or any information contained therein, relate to, the assessee; or
 - (e) The A.O has received any information under the scheme notified u/s 153A pertaining to income chargeable to tax escaping assessment for any A.Y in the case of the assessee.

Time limit for Issuance of Notice

Time limit for issuance of notice under section 148 of the Income-tax Act:

Particulars	Time Limit
In General	No notice shall be issued if 3 years have elapsed from the end of the relevant assessment year.
Where the Assessing Officer has in his possession books of account or other documents or evidence which reveals that the income chargeable to tax, represented in the form of: (i) An Asset; (ii) Expenditure in respect of a transaction or in relation to an event or occasion; or (iii) An entry or entries in the books of account. <i>which has escaped assessment amounts to or is likely to amount to Rs. 50 lakhs or more.</i>	Notice can be issued beyond a period of 3 years but not beyond the period of 10 years from the end of the relevant assessment year.

APPEALS BEFORE CIT(A)



An Overview

- Appeal - a remedy for redressal of grievances against unjust, erroneous, undesirable or invalid Orders passed by an Authority.
- No inherent right to appeal but conferred by the Statute.
- This right is conferred by the statute, hence subject to the terms and conditions specified therein.
- An appeal is a continuation of assessment proceedings. The right to appeal is a substantive right which gets crystallized when assessment proceedings are initiated

Two remedies are available against order of the Assessing Officer-

Appeal to Commissioner of Income Tax(Appeal)

- First Appeal in all 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.

Alternative 1 – Appeal to CIT(A)

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

Alternative 2- Revision u/s 263 or Registration u/s 12AA

Nature of Action	To whom it should be filed	Who can prefer?
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.

Orders which can be appealed against before CIT (Appeals)

An order against the assessee who denies his liability to be assessed- Assessment Order, Intimation, etc

Example:-

- Intimation u/s. 143(1)
- Order u/s 143(3)
- Order u/s 143(3) r. w. s. 147
- Order u/s. 153A
- Order u/s 154
- Order u/s. 92CD(3)

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

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 has discretionary powers of condonation which should be exercised judiciously.
- The CIT should have a pragmatic and liberal approach.

Documents to be filed with the Appeal

- Form – 35
- Statement of Facts
- Grounds of Appeal
- Copy of order against which appeal preferred
- Original notice of demand (u/s 156)
- Copy of challan for payment of Appeal Filing Fees
- Power of Attorney
- Covering letter addressed to the CIT (A)

Check list for filing a CIT appeal

- On receipt of order and notice of demand, note the date of service of order and notice of demand.
- Find the point of grievance. Prepare a reconciliation of return income and assessed income.
- List out the additions made, disallowances, whether a notice was issued u/s. 143(2) for assessment and the order passed are within the prescribed time limit
- Prepare application for rectification u/s. 154 in respect of mistakes, which are apparent from record.
- Fill Form No. 35. Prepare a statement of facts and the grounds of appeal.
- Ensure compliance of sec. 249 (4). Payment of taxes and interest.

Check list for filing a CIT appeal

- Pay appropriate appeal-filing fees.
- Grounds of appeal should be simple, concise, aptly worded, and serially numbered issue-wise.
- Statement of facts should highlight each and every fact, since there is only one opportunity for filing the statement of facts.
- 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”.
- 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.

Check list for filing a CIT appeal


- Ensure that the audit memo, grounds of appeal, statement of facts, etc. are signed and verified by the person who is authorised to sign the return of income.
- File a stay-petition with the Assessing Officer in respect of demand within 30 days of the date of service of the order.

Section 251: Powers of CIT (A)-

- To confirm, reduce, enhance or annul the assessment; or
- In an appeal against the order of assessment in respect of which the proceedings before the settlement commission abates under section 245 HA, confirm, reduce, enhance or annul the assessment.
- In Penalty matters, to confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
- In any other case – he may pass such orders in the appeal as he thinks fit.
- Power to consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised by the appellant.

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.

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- The CIT (A) must record in writing the reasons for admission of additional evidence.
 - Before considering the additional evidence, the CIT(A) must :
 - Allow the AO a reasonable opportunity to examine the evidence or document or to cross examine the witness produced by the appellant, or
 - To produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

Appeal Order and appeal effect:

- After conclusion of hearing the CIT (A) will issue a order of the appeal.
- If it is in favor of the "Assessee", either in full or partial, he has to file a request with AO for appeal effect.
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- In case of against the "Assessee", he has to decide to file second appeal file an appeal before jurisdictional ITAT within 60 days.

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 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.
- ***[CIT Vs. G. M. Mittal Stainless Steel (P) Ltd. (2003) 130 Tax man 67 / 263 ITR 255 (SC)]***
- 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.
- Avoid unnecessary arguments and altercations in case if the CIT(A) is not satisfied with your arguments.



Thank You.

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