



Law & Procedure of Appeals before Commissioner of Income Tax (Appeal)

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Appellate Hierarchy

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graph TD; A["1st Appeal – Commissioner of Income Tax (Appeals)  
(s. 246A to 251)"] --> B["2nd Appeal – Income Tax Appellate Tribunal (s. 252 to 255)"]; B --> C["3rd Appeal- High Court (s. 260A – 260B)"]; C --> D["4th Appeal - Supreme Court (s. 261 – 262)"];
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1st Appeal – Commissioner of Income Tax
(Appeals)
(s. 246A to 251)

2nd Appeal – Income Tax Appellate Tribunal (s.
252 to 255)

3rd Appeal- High Court (s.
260A – 260B)


4th Appeal - Supreme Court
(s. 261 – 262)

CIT(A) Stats Revealed in RTI Reply



- The Income Tax landscape in India is grappling with a substantial challenge as revealed in a recent RTI reply.
- The Principal Chief Commissioner of Income Tax (NFAC) discloses a staggering **361,748 APPEALS** pending before the first appellate authority CIT(A) as of January 1, 2024.

JCIT Appeal

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- ▶ New post of Joint/Additional Commissioner (Appeals) created;
100 new Joint Commissioners deployed to reduce pending appeals.
 - ▶ Responsible for disposal of small appeals.
 - ▶ The power granted to Commissioner (Appeal) is also extended to Joint commissioner of Income Tax (Appeal).

Background



- After an assessment - Decide whether you want to file an appeal
- An assessee has two options either to file an appeal before CIT(A) or revision petition to CIT u/s. 264
- Writ Petition before the High Court.
- No right of appeal to Revenue or Department. Only revision under Section 263

Appealable orders u/s 246A

Appeal can be filed before the CIT(A) against orders referred in section **246A** of the Act, which covers substantial orders passed under the Act, such as:

- **Intimation/ Assessment:** u/s 143(1)/(1B), u/s 143(3), u/s 163
- **Rectification:** u/s 154
- **Reassessment:** u/s 147
- **TDS/ TCS:** u/s 200A(1), u/s 206CB(1), u/s 201; u/s 206C(6A)
- **Search/ Seizure:** u/s 153A
- **Penalty:** u/s 221; u/s 271, u/s 271A, u/s 271AAA, u/s 271AAB, u/s 271F, u/s 271FB, u/s 272AA or u/s 272BB; u/s 275(1A), u/s 271B or u/s 271BB; u/s 271C, u/s 271CA, u/s 271D or u/s 271E, u/s 272A, u/s 272AA; under Chapter XXI

Non-Appealable Orders



Following orders not mentioned specifically u/s 246A

- Revisionary order passed by CIT u/s 263
- Order revoking registration u/s 12A passed by CIT(E) u/s 12AA(3)
- Order disposing legal objections u/s 147
- Order of refusal to grant stay of demand. [Sec 220(6)]
- Order passed u/s 148A(d)
- Order passed by AO u/s 197(1) [No deduction of TDS or deduction at lower rates]
- Order passed u/s 144C pursuant to DRP directions

Preparatory steps before filing an Appeal – 1/2

- Read the assessment order twice.
- Analyze the assessment order on Law & Merits
- Ascertain the date of receipt of order. Under e-assessment date of order and date of service of order will be same. Limitation starts from this day.
- Call for all notices particularly notice u/s 143(2),142(1) and Show cause notices issued during assessment proceedings and replies thereto.
- In case of reassessment call for notice u/s 148 and copy of sanction.
- Where proceedings are conducted under section 153, obtain all relevant statements.
- Take necessary action if assessee doesn't have the same.
- Ascertain whether additional evidences are required, to meet the objections of the AO.
- Ascertain whether it is possible to arrange additional evidence before expiry of period of limitation.

Filing an appeal before CIT(A)



U/s 246A

- Against the order passed by the Assessing officer (AO) u/s 143(1), 143(3), 147, 154, 201, 271 etc.

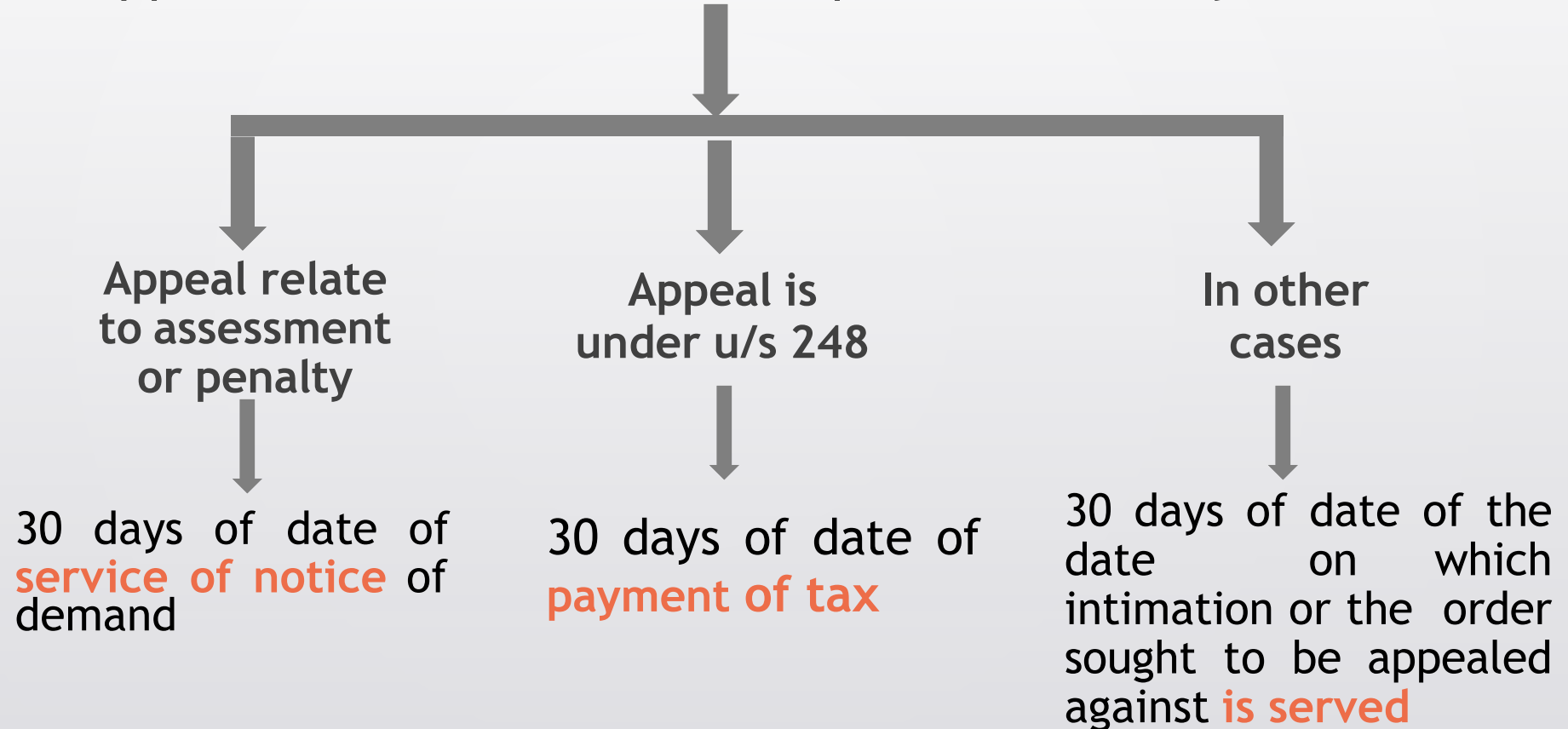
U/s 248

- Against the order passed by the Assessing officer (AO) u/s 195

Time Limit to file an Appeal [Section 249(2)]



Appeal should be file within a period of 30 days if



Fees for filing an appeal before CIT(A) [Section 249 (1)]

Clause	Criteria	Fees
(a)	Where total income/loss computed by AO is Rs 1,00,000 or less	Rs 250
(b)	Where total income/loss computed by AO exceed Rs 1,00,000 but does not exceed Rs 2,00,000	Rs 500
(c)	Where total income/loss computed by AO exceed Rs 2,00,000	Rs 1000
(d)	Where the subject matter of an appeal is not covered under clauses (a),(b) and (c)	Rs 250

* In case of assessed loss : Minimum fees is Rs 250

Type of Payment : 300 Income Tax



Condonation of delay in filing appeal [Section 249(3)]



- If there exists **SUFFICIENT CAUSE** for not filling the appeal in **30 DAYS**, CIT(A) may condone the delay.
- It will be advisable that the appeal in such case is accompanied by an application for condonation of delay narrating reason for delay. **reasons for delay and explaining each days delay.** (Section 5 of Limitation Act 1963)
- If the CIT(A) refuse to admit appeal after the prescribe period, the assessee has a right to file an appeal against such order.

Condonation of delay in filing appeal [Section 249(3)]

SUFFICIENT CAUSE -

The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply law in a meaningful manner which sub serves the ends of justice and to dispose matters on merits.

- ✓ Collector, Land Acquisition v Katiji (Mst) (1987) 167 ITR 471 (SC) “***When substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred.***”
- ✓ CIT v. Gangadhar Gowd Rama Gowd & Co (1986) 158 ITR 75 (AP)
- ✓ CIT (Addl) v Prem Kumar Rastogi (1978) 115 ITR 503 (All.)

Condonation – General Principles



- Sufficient cause must be liberally construed
- Technical faults Vs. Cause of Justice
- Length of Delay is immaterial
- Litigant never benefits by resorting to delay
- If no malafide intention - delay shall be condoned
- Condonation is however an exception and not a rule

Condonation – Reasons



Following reasons may be stated for condonation

- Lack of Proper knowledge
- Serious illness of the assessee or family member
- Absence of due guidance by the consultant
- Facts surfacing at a latter date
- Reconciliation of various accounting items later on
- Computer getting infected - repaired later on
- Reasons to avoid - Through oversight, Forgot documents in office etc

'Sufficient cause' in condonation of delay

- **Time taken in pursuing other remedies may be a valid cause** - CIT v K.S.P Shanmugavel Nadar & Others (1985) 153 ITR 596 (Mad) – *Not to indulge in forum shopping*
- **A subsequent decision of the Supreme Court or a High Court resulting in change of legal position** – CIT v Sothia Mining & Mfg. Corp.(1990) 186 ITR 182 (Cal)
- **Delay due to reason that Director of assessee who had to take a decision to file an appeal had resigned** - Elnet Technologies Ltd. v DCIT, Chennai (2018) 259 Taxman 593 (Mad)
- **Where the delay was alleged to be on account of illness but the medical certificate was not filed, in spite of an opportunity having been given, the refusal to condone the delay was justified** – [Sital Prasad v CIT(1991) 187 ITR 135 (All)]

Tax payable before filing an appeal [Section 249 (4)]



No appeal shall be admitted unless
at the time of filing an appeal :-

Where return has been filed
and the assessee has paid tax
due on the return income

Where no return has been filed,
the assessee has paid an amount
equal to the amount of advance
tax which was payable by him

Tax payable before filing an appeal [Section 249 (4)]

- CIT(A) has the power to exempt, in cases where no return was filed, for good and sufficient reasons
- Consequence - appeal will get dismissed *in limine*

Remedy to the Assessee if appeal is dismissed

1. Pay Taxes
2. File Appeal Again
3. Get the delay condoned
4. Give sufficient cause for not paying tax at the time of filing the original appeal

CIT Vs K Satish Kumar Singh 2012 209 Taxmann 502 (Kar)

ITO 2(2), Kalyan Vs Sai Krupa Construction Co (2007) 13 SOT 459 (Mum)

Form 35 – [Rule 45]

- ▶ An appeal to CIT(A) shall be made in Form No.35. and should be filed electronically
- ▶ Check all pre-filled details like - PAN, name, address, Phone no., email address etc
- ▶ Select assessment year
- ▶ Insert details of the order appeal against - section, sub-section under which the order passed, DIN, Date of order and Service of order.
- ▶ Details of an appeal in relation to any other assessment year is pending in the case of the appellant with any CIT(A).
- ▶ If appeal relates to any assessment, provide details of appeal : amount of income assessed, total addition or disallowance, amount of addition or disallowance, disputed demand etc.

Contd....

Form 35 – [Rule 45]

- ▶ An appeal relates to penalty, provide detail of penalty order
- ▶ If return has been filed, provide detail of taxes paid
- ▶ If assessee paid taxes under the influence of sec 249(4), provide details of tax payment-BSR code, serial no. etc.
- ▶ Statement of facts in brief – must not exceed 1000 words
- ▶ Grounds of appeal – each ground must not exceed 100 words
- ▶ If there is delay in filing an appeal, enter grounds for condonation- must not exceed 500 words
- ▶ Detail of challan or appeal fees paid u/s 249(1) of the act
- ▶ Form 35 does not accept special character e.g. # & % "" ' ' * = + [] \ {} ! etc.

Appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) [Form No. 35]

Appeal to the Joint Commissioner (Appeals) or the Commissioner of Income-tax (Appeals). This form is in compliance with rule 45

Provide details for each section

Basic information	✔ Completed	Modify if required	>
Order against which Appeal is filed	✔ Completed	Modify if required	>
Pending Appeal	✔ Completed	Modify if required	>
Appeal Details	✔ Completed	Modify if required	>
Details of Taxes Paid	✔ Completed	Modify if required	>
Statement of facts, Grounds of Appeal and additional evidence	✔ Completed	Modify if required	>
Appeal filing details	✔ Completed	Modify if required	>
Attachments	✔ Completed	Modify if required	>
Form of Verification	✔ Completed	Modify if required	>

< Back

Preview

FILING OF ADDITIONAL EVIDENCE BEFORE CIT(A)- RULE 46A



Additional evidence can be produced before CIT(A) when conditions specified in Rule 46A are satisfied and a finding is recorded **in writing**.

Can you file application for additional evidences at a later stage of the hearing - Yes/ no ?

FILING OF ADDITIONAL EVIDENCE BEFORE CIT(A)- RULE 46A

CASES WHERE ADDITIONAL EVIDENCE MAY BE FILED- RULE 46A

- Where the **AO has refused to admit evidence**, which ought to have been admitted;
- Where the **appellant was prevented by sufficient cause from producing the evidence** which he was **called upon** to produce 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 ;
- Order passed **without giving sufficient opportunity to the appellant** to adduce evidence relevant to any ground of appeal.
- *Speaking Order is a must .*
- *Admission and Non Admission can be challenged before the ITAT by Assessee & Revenue*

Drafting of Statement of Facts

- ▶ No format/order has been prescribed for drafting statement of facts
- ▶ It should have facts only and **NOT THE LAW POINTS.**
- ▶ Facts should contain only those facts which are relevant and directly or indirectly connected with the additions made in the assessment order
- ▶ Facts should be clear and should **NOT BE IN ARGUMENTATIVE FORM**
- ▶ Story of the case is to be mentioned here
- ▶ Facts should also **COVER** those **FACTS WHICH ARE NOT CONSIDERED BY AO.**
- ▶ It should be **COMPREHENSIVE AND COMPLETE.**
- ▶ Legal Decisions in support – whether to be mentioned ??? - Yes / No
- ▶ Remember - Statement of facts are not written submissions .

DRAFTING OF GROUNDS OF APPEAL

- ▶ **NO FORMAT** has been prescribed for drafting grounds of appeal
- ▶ It should be **PRECISE, COMPREHENSIVE, CLEAR & PROPERLY NUMBERED.**
- ▶ Jurisdictional Ground of Appeal & Factual Ground of Appeal
- ▶ If Jurisdictional ground of appeal is taken up, **MENTION THAT GROUND FIRST..**
- ▶ Include point on violation of principles of natural justice which is constitutional right as per Article 14.
- ▶ It should be in order of addition made in assessment order
- ▶ Separate ground for each addition must be taken

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

- ▶ Statement of facts should not be mixed with Grounds of appeal
- ▶ Must mention the Appellant craves leave to add/ alter/ amend/ withdraw any or all grounds of appeal before or at the time of appeal proceedings
- ▶ Levy of interest, if any, should be taken as ground of appeal
- ▶ Avoid including case laws in grounds of appeal. They should form part of written submissions to the ground of appeal.

Written submission before the CIT(A)

- The written submission to be presented before the CIT(A) must be a **detailed one**.
- **Ground wise explanation** of each issue contested in the appeal must be given.
- For each Ground the submission must have three components – **Facts , Finding and Argument**.
- Further, as far as possible each contention should be **supported by relevant evidence**.
- The evidence must be given in the form of Annexures or may be given as a separate **Paper Book**.
- **References of these evidences** should be given in the written submission.
- **Submit case laws** of the Supreme Court or the jurisdictional High Court and ITAT.

POWERS OF CIT(A)

- ▣ *Co-terminus with power of the AO- He can do what the assessing officer can do and also direct the AO to do what he failed to do- CIT vs. Kanpur Coal Syndicate (53 ITR 225) (SC)*
- ▣ Power to **reduce, confirm, enhance or annul** the assessment
- ▣ Power to **enhance** the income to be exercised only after giving an opportunity of hearing.
- ▣ Power to call for **remand report** from the Assessing Officer
- ▣ Power to call for **additional details** (that do not amount to filing of additional evidence by the appellant).
- ▣ Power of CIT Ranges over the entire assessment.
- ▣ Examination of Issues raised for the First time – **CIT Vs Britannia Industries 2007 396 ITR 677 (Cal – HC)**

POWERS OF CIT(A)

- Cannot enhance Assessment by discovering new sources of income which were not considered by the AO -**Shapoorji Mistry vs. CIT (44 ITR 89) (SC)**.
- Opportunity of hearing to be granted before any enhancement of assessment
- No power to enhancement in second round of litigation after matter is remanded back by Tribunal
- No power to dismiss in default any appeal.
- Duty to Decide all the appeals on merit even if assessee failed to appear.
- No power to remand back the matter to AO
- Cannot travel beyond the assessment year under consideration
- No power to Direct AO to reopen the assessment of earlier years
- No Power to award cost to parties

TIME LIMIT FOR PASSING ORDER

- Sec 250(6A)
 - within one year from the end of financial year in which the appeal is filed
- Only directive - *'may hear and decide'*



Withdrawal of Appeal



- Appeal once filed cannot be withdrawn
- No provision of withdrawal in the Act. CIT Vs Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC)
- No constitutional right to seek withdrawal of appeal.
- You can request the CIT your wish to not prosecute the appeal.



Faceless Appeal Scheme 2021

SCOPE OF THE SCHEME

The Scheme only applies to the **Income Tax Act, 1961**, does not apply to any other laws

As per CBDT Press Release dated Sept 25, 2020, following appeals not covered under the Scheme-

- Appeals relating to serious fraud
- Major Tax Evasion
- Sensitive & Search matters
- International Tax
- Black Money Act

PERSONAL HEARING IN FACELESS APPEALS

- FACELESS APPEAL SCHEME, 2020
- FACELESS APPEAL SCHEME , 2021 (w.e.f. 28-12-2021)

Mandatory personal hearing through Video Conferencing if request is made by the assessee. **Bank of India Vs Asst CIT (Mumbai Tribunal)**

- 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.

Binding Decision of Jurisdictional High Court

- Problems in National Faceless Appeal Centre when conflicting judgements of different High Courts are available.
- Decision of Jurisdictional high courts are binding on all lower authorities. CIT Vs Ralson Industries (2007) 288 ITR 322 (SC)
- NFAC to follow the order of the High Court under which the Jurisdictional Assessing Officer is located. Mahadev Cold Storage VS Jurisdictional AO (2021) Taxpub(DT) 3188 (Agra Trib)

Adjournment – Imp Points for Consideration

- The Assessee can seek **ADJOURNMENT ONLY UPTO 15 CALENDAR DAYS** from the due date in notice.
- However, no adjournment request for a date falling **WITHIN 7 DAYS PRIOR TO THE PROCEEDING LIMITATION DATE** can be made.
- The request for seeking adjournment should be **EITHER APPROVED OR REJECTED** by the department and informed to the Assessee by way of a **SMS OR AN E-MAIL**.

STAY ON RECOVERY

PAYMENT OF 20% DEMAND MANDATORY ?

OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 29-2-2016 -15%

Amended by OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 31-7-2017 and increased to 20%

- This circular is directory in nature, as held by the following cases
 - Commissioner is not bound by administrative circulars issued by the CBDT – can grant stay of demand on payment of an amount less than 20%- ***PCIT vs LG Electronics India Pvt Ltd (Civil Appeal No 6850 of 2018) (SC)***;
 - The AO is not justified in insisting on payment of 20% of the demand based on CBDT's instruction dated 29.02.2016 during pendency of appeal before the CIT(A). This approach may defeat & frustrate the right of the assessee to seek protection against collection and recovery pending appeal. Such can never be the mandate of law - ***Bhupendra Murji Shah vs. DCIT (423 ITR 300) (Bombay HC)***.
 - Where the assessment is unreasonably high pitched, consequent demands should be stayed- ***Flipkart India Pvt Ltd. v ACIT (396 ITR 551) (Karnataka HC)***.

Conditions for grant of Stay by AO

In granting stay the Assessing Officer may -

- require an undertaking from the assessee that he will **cooperate in the early disposal of appeal.**
- reserve the right to **review the order passed after expiry of reasonable period** (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;
- reserve the **right to adjust refunds arising**, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.

Stay Order Rejected by AO



- File an application before the Jurisdictional PCIT and request for a personal hearing.
- Explain the genuine difficulty faced by the AO
- Request for deposit a sum less than 20 %
- Request for payment in installments

Stay of Demand

Is it necessary to approach the AO before the CIT(A)

No, the assessee need not approach the AO before applying to CIT(A) for stay of recovery of tax.

- ► MK Mohammed Kunhi 71 ITR 815 (SC)
- ► TIN Manufacturing Co of India 212 ITR 451 (All)
- ► Prem Prakash Tripathi v. CIT(1994) 208 ITR 461 (All) (High Court)
- ► Paulsons Litho Works v. ITO(1994) 208 ITR 676 (Mad) (High Court)
- ► Agricultural Produce Market Committee vs. CIT (2005) 279 ITR 371 (Pat.)(High Court)
- ► Debasish Moulik vs. Dy. CIT (1998) 231 ITR 737 (Cal.)(High Court)
- ► LG Electronics India Pvt. Ltd. v. CIT (2012) 209 Taxman 536 (All)(High Court)
- ► Industrial Development Corporation of Maharashtra Ltd. v. ACIT (2012) 343 ITR 102 (Bom) (High Court)
- ► Idea Cellular Ltd. v. CIT (2012) 75 DTR 105 (MP) (High Court)
- ► Balaji Universal Tradelink (P) Ltd. v. UOI (2012) 76 DTR 132 (Bom) (High Court)

Stay of Demand

When an appeal is pending before the CIT(A), does he have the power to stay demand?

- The CIT(A) is empowered to stay the recovery of tax against an application filed by the assessee.
- The assessee has to first file the appeal before filing the stay application.
- The power of the appellate authority to stay the recovery of the demand of dues which are the subject matter of appeal pending before him is independent of the provisions of sub-section(6) of section 220 of the Act.
- **FILE WRIT IF RECOVERY PROCEEDINGS ARE INITIATED BEFORE DISPOSAL OF STAY APPLICATION BY CIT(A) – UTI MUTUAL FUND – BOMBAY HIGH COURT**

Stay of Demand

- No automatic stay of demand on filing of appeal, or during the pendency of such appeal, with the CIT(A) [Refer: Union of India v Nawn (BC) (1972) 84 ITR 526 (Cal.)]
- Power with CIT(A) to grant stay
- The powers of granting stay on demand are inherent with CIT(A) u/s 251
 - ✓ Paulsons Litho Works v ITO (1994) 208 ITR 676 (Mad.)
 - ✓ Maheshwari Agro Industries (Raj HC)

Excess recovery even after payment of 20 % tax amount

- CAN Department collect more tax than 20 % as prescribed in the circular ?
- What can be done in cases where more than 20% amount has been recovered ?

Local High Pitch Committee



- Instruction F. No. 225/101/2021-ITA-II dated 23-04-2022
- constitute Local Committees to deal with Taxpayers' Grievances from High-Pitched Scrutiny Assessment' in each Pr. CCIT region
- expeditiously deal with Taxpayers' grievances arising from High-Pitched Scrutiny Assessment
- Examine whether there is a *prima facie* case of
- High-Pitched Assessment,
- non-observance of principles of natural justice,
- non-application of mind or gross negligence of Assessing Officer/Assessment Unit
- Administratively advise the Jurisdictional PCIT to prevent any coercive recovery
- **ASK THE COMMITTEE TO GRANT A PERSONAL HEARING BEFORE PASSING ORDER**

Out of Turn Hearing

- F. No. 279/Misc./M-102/2021-ITJ Dated 29-12-2021
- Guidelines for Priority out of turn hearing
- may be considered by the Pr. CCIT NFAC and CCsTT of Central charges and International Taxation on the basis of recommendations of jurisdictional Pr.CIT/ Pr.CIT(Central)/ CIT (IT)
- i) Cases having Demand above Rs. 1 Cr
- ii) Cases where refunds, as originally claimed in ITR, are in excess of 1,00,000/-,
- iii) Cases where directions to this effect have been issued by Courts,
- iv) Cases where request is made by senior citizens and/ or super senior citizens,
- v) Any other case or genuine hardship
- **As per revised circular dated 07-03-2024. Point No (ii) has been replaced**
- (ii) Cases where a VIP/PMO Reference has been received for expeditious disposal

Summary

File Appeal before CIT(A) & SIMULTANEOUSLY File stay application before the cit (A)

File Stay application When you receive a notice for recovery from the JAO

File out of turn hearing if satisfying criteria in circular.

File a petition before the HPC for stay on any coercive recovery.

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