Appeals

Lesson 6

KEY CONCEPTS

■ Appeal ■ Faceless Appeal ■ Revision of Order ■ Penalty ■ Offence ■ Prosecution

Learning Objectives

To understand the:

- The orders which are appealable before different appellate authorities.
- The time limit for filing an appeal before different appellate authorities.
- What are the provisions for filing Appeals before different appellate authorities?
- The relevant rules with respect to filing of an appeal.
- The relevant Forms with respect of filing an appeal.
- Circumstances where the order passed by the assessing officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of Revenue.
- Revision of Orders prejudicial to the interest of assessee.
- Time limit for revision of order
- What is the ground and quantum of penalties imposed?
- What is the ground and quantum of Prosecution imposed?

Lesson Outline

REGULATORY FRAMEWORK

Sections	Income-tax Act, 1961
Section 246	Appealable order before Joint Commissioner (Appeals)
Section 246A	Appealable order before Commissioner (Appeals)
Section 249(1)	Procedure for filing of Appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)
Section 249(2)	Period of Limitation to prefer an Appeal before Joint Commissioner (Appeals) or Commissioner (Appeal)
Section 249(4)	Payment of Tax before filing Appeal before Joint Commissioner (Appeals) or Commissioner Appeal
Section 250	Procedure an Appeal before Joint Commissioner (Appeals) or Commissioner Appeal
Section 250(6B)	Faceless Appeal Scheme
Section 251	Powers of the Commissioner (Appeals)
Section 252	Appellate Tribunal
Section 253(1), (2)	Appealable Orders to Appellate Tribunal
Section 253(3), (4) & (6)	Procedure for filing appeal before Appellate Tribunal
Section 254	Order of Appellate Tribunal
Section 255	Procedure of Appellate Tribunal
Section 260A	Appeal to High Court
Section 261	Appeal to the Supreme Court
Section 263	Revision of orders prejudicial to the Interest of Revenue
Section 264	Revision of orders prejudicial to the Interest of Assessee
Relevant Rules	**Income Tax Rules, 1962**
Rules 45	Form of appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)
Rule 46A	Production of additional evidence before the Joint Commissioner (Appeals) and Commissioner (Appeals)
Rules 47	Form of appeal and memorandum of cross-objections to Appellate Tribunal
Relevant Forms	
Form No. 35	Form of Filing an appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)
Form No. 36	Form of Filing an appeal before Income Tax Appellate Tribunal
Form No. 36A	Memorandum of Cross Objection

INTRODUCTION

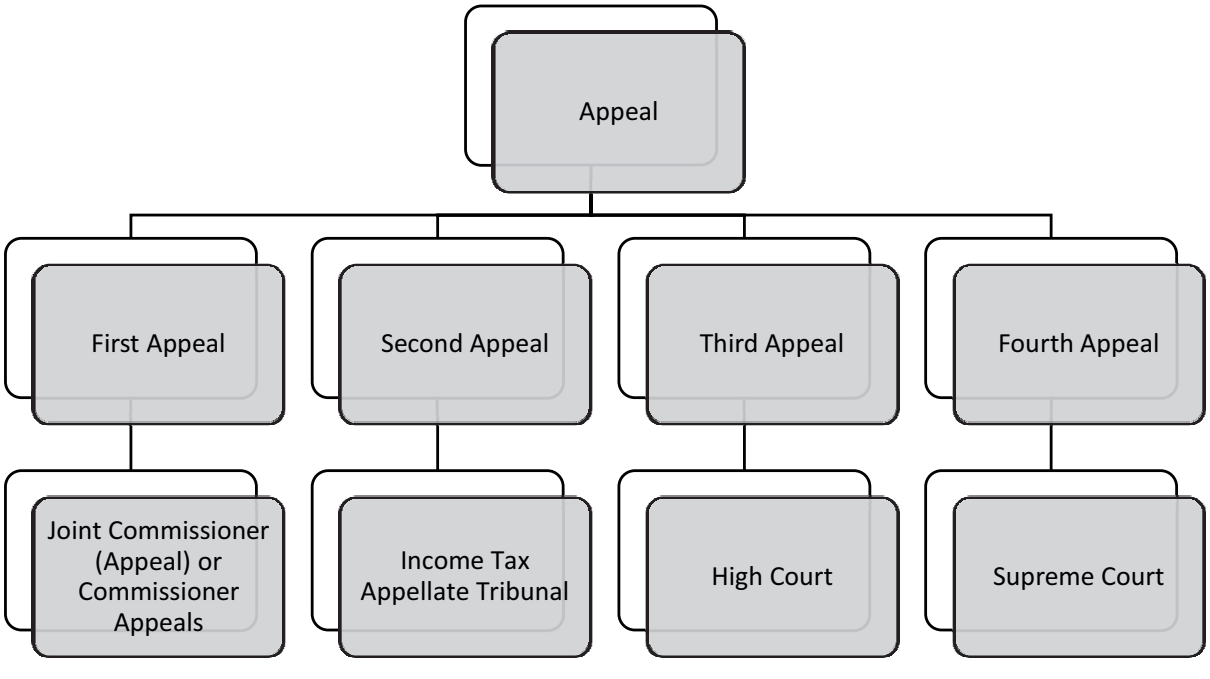
The right to appeal arises where the taxpayer is aggrieved by the order passed by the income-tax authority. Where the Assessing Officer accepts the return filed by the tax payer and passes an order making no modification, an appeal does not lie against that order as the taxpayer cannot be said to be aggrieved of that order.

An appeal is a complaint to a superior authority of an injustice done by inferior authority. The party complaining is called "Appellant" and the other party is known as "Respondent"

The right to appeal must be given by express enactment in the Act. Therefore, in case there is no provision in the Act for filing an appeal regarding a particular matter, no appeal shall lie. The right to appeal arises where the taxpayer is aggrieved by the order passed by the income-tax authority. However, where the Assessing Officer accepts the return filed by the tax payer and passes an order making no modification, an appeal does not lie against that order as the taxpayer cannot be said to be aggrieved of that order. Similarly, where an appellate authority accepts the contention of the taxpayer and allows the appeal, there is no further appeal by the assessee against that order.

The assessee may prefer an appeal against the orders of the Assessing Officer to the Joint Commissioner (Appeals) or Commissioner (Appeals) as the case may be, in accordance with the relevant provisions under Section 246 or 246A and appeal against the order of the Joint Commissioner (Appeals) or Commissioner (Appeals) can be preferred by the Assessee or the Income Tax Authority and such appeal lies with the Appellate Tribunal.

The Finance (No.2) Act, 1998 has amended the provisions regarding remedy against order of Tribunal. Where earlier the assessee or the CIT, if not satisfied with the order of Tribunal, could only request the Tribunal to refer that matter to the High Court. After 1.10.98 as provided by Finance (No.2) Act, 1998 the assessee or CIT if not satisfied with the order of the tribunal can appeal directly to the High Court, if High Court is satisfied that the case involve a substantial question of law and if the assessee or Commissioner of Income-tax is not satisfied with the order passed by the High Court they may file an appeal against the order of the High Court to the Supreme Court. However, it should be noted that in the case of question of fact tribunal is the final & binding authority and its decision is final.



APPEALABLE ORDERS BEFORE JOINT COMMISSIONER (APPEALS) (SECTION 246)

Any assessee aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against:

(a) an order being an intimation under section 143(1), where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(b) an order of assessment, reassessment or re-computation under section 147;

(c) an order being an intimation under sub-section (1) of section 200A;

(d) an order under section 201;

(e) an order being an intimation under sub-section (6A) of section 206C;

(f) an order under sub-section (1) of section 206CB;

(g) an order imposing a penalty under Chapter XXI; and

(h) an order under section 154 or section 155 amending any of the orders mentioned in clauses (a) to (g):

However, no appeal shall be filed before the Joint Commissioner (Appeals) if an order referred to in this sub-section is passed by or with the prior approval of, an income-tax authority above the rank of Deputy Commissioner.

Further, the Board or an income-tax authority so authorised by the Board, may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred. However, where an appeal is transferred the appellant shall be given an opportunity of being reheard.

APPEALABLE ORDERS BEFORE COMMISSIONER (APPEALS) (SECTION 246A)

Appeal can be filed before Commissioner (Appeals), when a tax payer is adversely affected by following orders as passed by various Income tax authorities:

- against an order passed by a Joint Commissioner under Clause (ii) of Sub-section (3) of Section 115VP or an order against the assessee where he denies his liability to be assessed under the Income Tax Act, or an intimation under section 143 (1) or (1B) or section 200A(1) or section 206CB(1), where the assessee or deductor or collector objects to making of adjustment or any order of assessment under section 143(3) except an order passed in pursuance of directions of Dispute Resolution Panel or Section 144 where assessee object to the amount of income assessed or amount of tax determined or amount of loss computed or status under which he is assessed;
- against an order of assessment, re-assessment or re-computation under Section 147 except an order passed in pursuance of directions of dispute resolution panel or Section 150;
- an order of assessment or reassessment under Section 153A except an order passed in pursuance of directions of dispute resolution panel;
- an order of assessment or re-assessment under section 92CD(3);
- against an order of rectification of mistake under Section 154 or Section 155 having effect of enhancing assessment or reducing refund or order refusing to allow claim made by assessee under these sections;
- against an order under Section 163 treating the assessee as the agent of a non-resident;

- against an order under Section 170(2) or 170(3) relating to succession of business otherwise on death;
- against an order made under Section 171;
- against an order under Section 185;
- against an order cancelling the registration of firm under section 186(1) or (2);
- against an order under Section 237;
- against an order under Section 239A;
- against an order under Section 201 or 206C(6A);
- A person deemed to be an assessee in default for not collecting the whole or any part of tax or after collecting the tax, failing to pay the same, may appeal before Commissioner (Appeals) on or after April 1, 2007.
- against an order imposing a penalty under Section 221, 271, 271A, 271AAA, 271AAB, 271F, 271FB, 272AA, Section 272, 272B, 272BB or Section 273;
- an order of imposing or enhancing penalty under Section 275(1A);
- against an order of assessment made by an assessing officer u/s section 158BC(c) or Section 158BC(1)(c), in respect of search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132A;
- against an order imposing a penalty under Sub-section (2) of Section 158BFA;
- against an order imposing penalty under Section 271B or Section 271BB;
- against an order made by a Joint Commissioner imposing a penalty under Section 271C, Section 271CA, Section 271D or Section 271E;
- against an order made by a Joint Commissioner imposing a penalty under Section 272AA and by a Joint Commissioner or Joint Director under Section 272A;
- against an order imposing a penalty under Chapter XXI of Income-tax Act;
- against an order made by an Assessing Officer other than a Joint Commissioner under the provisions of this Act, in case of specified person or classes of persons.

PROCEDURE FOR FILING AN APPEAL BEFORE JOINT COMMISSIONER (APPEALS) OR COMMISSIONER APPEAL [SECTION 249(1)]

Relevant Form and document to be filed:

(a) Form 35 (including statement of facts and grounds of appeal) - in duplicate. However, e-filing has been made mandatory for persons for whom e-filing of return of income is mandatory w.e.f 1/3/2016.

(b) One copy of order appealed against

(c) Notice of demand in original

(d) Copy of challans of fees. The details of the challan (i.e., BSR code, date of payment of fee, serial number and amount of fee) are required to be furnished in case of e-filing of form of appeal. The appeal should be filed in Form No. 35 and verified in the prescribed manner. In this form, details such as name and address of the tax payer, Permanent Account Number (PAN), assessment year, details of the order against which appeal is filed etc. are to be filled in.

Form No. 35 is the prescribed form under Rule 45(1). The form of appeal, the grounds and the verification appended to the form 35 should be furnished electronically under digital signature or through electronic verification code as per provisions applicable to the signing of return under Section 140. It also requires the memorandum of appeal, statement of facts and the grounds of the appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.

Against the column "Relief claimed in appeal", amount of reductions sought in income or any other relief sought in appeal is to be mentioned.

In the column "Statement of Facts", relevant facts in respect of each subject matter of appeal are to be mentioned in brief. Nature of business or profession, account books maintained etc. may also be mentioned in this column.

Against column "Grounds of appeal", points on which relief is sought in appeal are to be mentioned in narrative form. For example, in an appeal against addition to the returned income by applying a gross profit rate on estimated turnover, the ground of appeal may be, "the Ld. Assessing Officer was not justified in rejecting the results as per regular books of account and in estimating the income by applying an adhoc rate of gross profit."

Prescribed Fees

Prescribed fees to be paid before filing appeal to the Joint Commissioner (Appeals) OR Commissioner (Appeals) depends upon total income as determined by the Assessing Officer. Fees as under are to be paid and proof of payment of fee is to be attached with Form No. 35.

Sl. No.	Assessed Income (i.e. total income as computed / determined by the Assessing Officer)	Fees
1	Rs. 1,00,000 or less	Rs. 250
2	More than Rs. 1,00,000 but not more than Rs. 2,00,000	Rs. 500
3	More than Rs. 2,00,000	Rs. 1000
4	Any other case	Rs. 250

Appeal fee can be paid in any branch of authorised bank/ State Bank of India/Reserve bank of India along-with challan. E-payment can also be made.

PERIOD OF LIMITATION TO PREFER AN APPEAL BEFORE JOINT COMMISSIONER (APPEALS) OR COMMISSIONER APPEAL [SECTION 249(2)]

The appeal has to be presented within the period of limitation as given below:

1. **Appeal by person denying liability to deduct tax in respect of payments payable to non-resident or a foreign company [Section 249(2)(a)]** : Where the appeal relates to any tax deducted at source from payment made to a non-resident, (other than a company) or to a foreign company, any interest, other than interest on securities or any other sum chargeable under the provisions of the Income-tax Act (not being salaries), within 30 days from the date of payment of tax deducted at source to the credit of the Central Government.
2. **Appeal against assessment to penalty [Section 249(2)(b)]**: Where the appeal relates to any assessment or penalty order the appeals have to be presented within 30 days of the date of service of the notice of demand relating to that assessment or penalty order.
3. **Other appeals [Section 249(2)(c)]**: In any other case, the appeal has to be presented within 30 days of the date on which intimation of the order sought to be appealed against is served on the appellant.

In computing the period of limitation for an appeal or an application, the day on which the order is served has to be excluded.

If the assessee was not furnished with a copy of the order along with the notice of the order, or demand, the time required for obtaining a copy of such order is also to be excluded and the date will be extended by that period. It may be noted that even where the assessee has not been supplied with copy of the order concerned, the time taken in making an application which does not comply with all the legal requirements cannot be excluded under the provisions of Section 268. If the application for obtaining the copy of the order has not been properly stamped or has been made by a person not authorised to do so, the time which has elapsed between the making of the invalid application and putting the application in order would not be excluded in computing the period of limitation.

If any appeal is filed after the period of limitation, Joint Commissioner (Appeals) OR the Commissioner (Appeals) may admit the appeal after the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period (Section 249(3). Such delayed appeals must be accompanied by a condonation petition showing and explaining the reason/cause of the appellant for not being able to file the appeal within the period of limitation and praying for condemnation of the delay. The power to condone the delay is discretionary and the discretion must be judiciously exercised. The discretion is to be exercised where sufficient cause for not presenting the appeal within the time is made out by the appellant. The period for filing an appeal cannot be extended simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. The sufficient cause must be a cause which is beyond the control of the party seeking the condonation of the delay. Illness is sufficient cause, if it can be shown that the man was utterly disabled to attend to any duty. The cause for delay in filing the appeal which, by due care and attention could have been avoided cannot be a sufficient cause. Negligence on the part of the servants or agent entrusted with the filing of the appeal cannot be considered as a sufficient cause. The change of legal situation brought about by a decision of the Supreme Court may be valid ground for condoning delay. The words "sufficient cause" should receive a liberal interpretation so as to advance substantial justice where no negligence nor inaction nor want of bona fide is imputable to the applicant.

An appeal presented after the period of limitation is still an "appeal" and an order dismissing it as time barred is one passed in appeal [under Section 250 and not under Section 249(3)]. An appeal lies therefrom to the Appellate Tribunal and thereafter to the High Court on a question of law.

Provided further that where an application has been made under sub-section (1) of section 270AA, the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee, shall be excluded.

PAYMENT OF TAX BEFORE FILING APPEAL [SECTION 249(4)]

No appeal against any order passed by the Assessing Officer can be admitted by the Joint Commissioner (Appeals) OR Commissioner (Appeals) unless as the assessee has paid the tax due on the income returned by him where a return has been filed by the assessee or where the assessee has not furnished the return of income, he has paid an amount equal to the amount of advance tax which was payable by him.

If the appellant wants exemption from the payment of such tax, he has to make an application to the Joint Commissioner (Appeals) OR Commissioner (Appeals) who is empowered to waive this requirement in appropriate cases if he is satisfied that there are good and sufficient reasons for doing so.

In such cases, the Joint Commissioner (Appeals) OR Commissioner (Appeals) is required to record such reasons in writing. It may be noted that Income-tax law requires only the payment of tax before the filing of the appeal and not the payment of any penalty or any other sum payable by the assessee on the basis of the order appealed against.

SUBMISSION OF PAPER BOOK

The appellant or the respondent, i.e., the opposite may submit a paper book. A paper book is to be submitted in duplicate and should contain documents or statements or other papers referred to in the assessment order or the appellate order on which appellant/respondent wants to rely.

- The paper book should be duly indexed and page numbered.
- It should be filed at least a day before the hearing of the appeal.
- It should be filed along-with the proof of service of copy of the paper book to the opposite party at least a week before.
- Each paper in the paper book is to be certified as true copy by the party filing the same.

The delay in filing the paper book may be condoned in genuine cases of delay.

The ITAT can also on its own direct the preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal.

Additional evidence, if any, should be filed separately and should not form part of the paper book.

PROCEDURE IN APPEAL (SECTION 250)

Joint Commissioner (Appeals) OR Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.

The following shall have the right to be heard at the hearing of the appeal:

(a) The appellant, either in person or by an authorised representative.

(b) The Assessing Officer,

The Joint Commissioner (Appeals) OR Commissioner (Appeals) shall have the power to adjourn the hearing of the appeals from time to time. He may, before disposing of any appeal, make such further enquiry as he deems fit, or may direct the Assessing Officer to make further enquiry and report as he deems fit, or may direct the Assessing Officer to make further enquiry and report the result of the same to the Joint Commissioner (Appeals) OR Commissioner (Appeals) as the case may be.

The Joint Commissioner (Appeals) OR Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal if he is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable. His order disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. In every appeal, the Joint Commissioner (Appeals) OR Commissioner (Appeal), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him Joint Commissioner (Appeals) OR Commissioner (Appeal) under Section 246A(1). On the disposal of the appeal, Joint Commissioner (Appeals) OR the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner.

Rule 46A Production of additional evidence before the Joint Commissioner (Appeals) and Commissioner (Appeals)

The appellant shall not be entitled to produce before the Joint Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances:

a) where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or

b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or

c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or

d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

However, no additional evidence shall be admitted unless the Joint Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission and a reasonable opportunity be given to the assessing officers 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.

Decision and Order of Joint Commissioner (Appeals) or CIT (Appeals)

After the hearing is concluded, Joint Commissioner (Appeals) OR Commissioner (Appeals) passes order in writing, disposing of the appeal and stating the decision on each ground of appeal with reasons. In case of assessment and penalty, Joint Commissioner (Appeals) OR Commissioner (Appeals) may confirm, reduce or enhance it (including assessment in respect of which proceedings before the Settlement Commission abates). Before enhancing any assessment or penalty, it has to provide reasonable opportunity to the tax payer for showing cause against such enhancement. However, if such an appeal is against an order of assessment made under section 144, the Commissioner (Appeals) may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment. (effective from 01-10-2024)

While disposing of an appeal, the Joint Commissioner (Appeals) OR Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which order appealed against was passed, even if such matter was not raised by the tax payer.

FACELESS APPEAL [SECTION 250(6B)]

Following amendments have been made by the Finance Act, 2020 in section 250 of the Income Tax Act, 1961 which deals with the appeals before CIT (Appeals) to provide for the legal basis to the Faceless Assessment Scheme. In section 250 of the Income-tax Act, the sub-sections 6(B) has been inserted as under:

"(6B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by:

(a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals)."

Notification of the Scheme of Faceless Appeals

Accordingly, the Central Government has notified the Scheme called the Faceless Appeal Scheme, 2020 vide CBDT Notification No. 76/2020 and No.77/ 2020 dated 25.09.2020 to provide for e-appeal and for the online hearing and disposal of appeals related to income-tax disputes by the Commissioner (Appeals). This scheme shall become effective from 25.09.2020 and shall apply to all the pending appeals and any further new appeals filed under the Income Tax Act. CBDT has further notified the Faceless Appeal Scheme 2021, effective from

28-12-2021. The new scheme is notified in supersession of the earlier Faceless Appeal Scheme, 2020. Under Faceless Appeals, all Income Tax appeals will be finalised in a faceless manner under the faceless ecosystem.

Under the Faceless Appeals, everything from e-allocation of appeal, e-communication of notice / questionnaire, e-verification / e-enquiry to e-hearing and finally e communication of the appellate order, the entire process of appeals will be online, dispensing with the need for any physical interface between the appellant and the Department. There will be no physical interface between the taxpayers or their counsel/s and the Income Tax Department.

File Appeal

A taxpayer can file an appeal through his registered account on the Income Tax e-filing portal. All notices, letters and orders are issued using unique Document Identification Number (DIN) through electronic mode only.

Scope of the Scheme

The appeal under this Scheme shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

Faceless Appeal Centers

For the purposes of this Scheme, the Board set up

i. National Faceless Appeal Centre to facilitate the conduct of e-appeal proceedings in a centralised manner, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme;

ii. Appeal units, as it may deem necessary to facilitate the conduct of e-appeal proceedings, to perform the function of disposing appeal, which includes admitting additional grounds of appeal, making such further inquiry as thinks fit, directing the (National Faceless Assessment Centre) or the Assessing Officer, as the case may be, for making further inquiry, seeking information or clarification on admitted grounds of appeal, providing opportunity of being heard to the appellant, analysis of the material furnished by the appellant, and such other functions as may be required for the purposes of this Scheme;

and specify their respective jurisdiction.

Procedure of Conduct of Faceless Appeals

Under the newly substituted 'Faceless Appeal Scheme, 2021', the appeal of the taxpayer before the CIT (Appeal), shall be disposed of as per the following procedure, namely:

(1) **Assignment of Appeal:** The National Faceless Appeal Centre shall assign the appeal for disposal to a Commissioner (Appeals) of a specific appeal unit through an automated allocation system;

(2) **Communications through NFAC:** All communication between the Commissioner (Appeals) and the appellant or any other person or the Assessing Officer with respect to the information or documents or evidence or any other details, as may be necessary under this Scheme shall be through the National Faceless Appeal Centre.

(3) **Assignment of Appellate Proceedings:** On assignment of an appeal, the Commissioner (Appeals):

a) May **condone the delay in filing appeal** if the appeal is filed beyond the time permitted under Section 249 of the Act and record the reasons for such condonation or otherwise in the appeal order passed by him;

b) Shall through the NFAC **give notice to the appellant asking him to file his submission** within the date and time specified in such notice and also send a copy of such notice to the Assessing Officer either directly or through the NFAC, as the case may be;

c) May through the NFAC **obtain such further information, document or evidence from the appellant** or any other person, as the case may be;

d) May through the NFAC **obtain a report of the Assessing Officer either directly or through the NFAC**, as the case may be, on grounds of appeal or information, document or evidence furnished by the appellant;

e) May, through the NFAC, request the Assessing Officer directly or through the NFAC, as the case may be, **for making further inquiry under Section 250(4) of the Act and submit a report** thereof;

f) Shall, through the NFAC **serve a notice upon the appellant** or any other person, as the case may be, **or the Assessing Officer** directly or through the NFAC, as the case may be, **to submit such information, document or evidence or report**, as the case may be, as may be specified by the Commissioner (Appeals) or relevant to the appellate proceedings, on a specified date and time;

(4) **Response to Notice:** The appellant shall file a response against the notice received. The NaFAC/AO shall furnish a report in response to the notice within the specified time or extended time as may be allowed based on an application made to the NFAC.

(5) **Forwarding of Response to AU:** The NFAC shall forward the response of the appellant or report of NaFAC/AO to the Commissioner (Appeals) in Appeal Unit (AU). However, where no response/report, as the case may be, has been filed/received, then the NFAC shall inform the Commissioner (Appeals) in AU, about the same.

(6) **Raising of Additional Grounds of Appeal:** The appellant may file additional grounds of appeal to the Commissioner (Appeals) through the NFAC, in such form, as may be specified by the NFAC, specifying therein the reason for omission of such ground in the appeal filed by him. The Commissioner (Appeals) in AU shall through NFAC, send the additional ground of appeal to NaFAC/AO. The NaFAC/AO shall furnish their comments to the Commissioner (Appeals) in AU through NFAC, within the specified or extended time limit.

(7) **Admission or Rejection of Additional Grounds of Appeal**: The Commissioner (Appeals) in AU shall, after taking into consideration the comments, if any, received from the NaFAC/AO, as the case may be,

(a) if is satisfied that the omission of additional ground from the form of appeal was not wilful or not unreasonable, admit such ground; or

(b) in any other case, not admit the additional ground, for reasons to be recorded in writing in the appeal order passed by him.

The NFAC shall intimate the admission or rejection of the additional ground to the appellant.

(8) **Submission of Additional Evidence:** The appellant may furnish additional evidence to the Commissioner (Appeals) through the NFAC, in such form as may be specified by the NFAC, specifying therein how his case is covered by the exceptional circumstances specified in sub-rule (1) of Rule 46A. The Commissioner (Appeals) in AU shall, through NFAC, send the additional evidence to NaFAC/AO, for furnishing a report on the admissibility of additional evidence in accordance with Rule 46A of the Rules. The NaFAC/AO shall furnish their remand report to the Commissioner (Appeals) in AU through NFAC, within the specified or extended time limit.

Before taking into account the additional evidence, the Commissioner (Appeals) in AU shall provide an opportunity to the NaFAC/AO to examine such evidence or to cross-examine witnesses produced by the appellant or to produce any evidence or document or any witness in rebuttal. Accordingly, the NFAC shall serve a notice to the NaFAC/AO.

The NaFAC/AO may request the Commissioner (Appeals) in AU through NFAC to direct the production of any document or evidence by the appellant or the examination of any witness. Based on the examination, the NaFAC/AO shall furnish the report to the Commissioner (Appeals) in AU through NFAC.

Accordingly, the Commissioner (Appeals) in AU, shall serve a notice to the Appellant through NFAC. NFAC shall send the appellant's response to such notice to the Commissioner (Appeals) in AU.

(9) **Admission or Rejection of Additional Evidence**: The Commissioner (Appeals) in AU may, after considering the additional evidence furnished by the appellant and the remand report, if any, furnished by the AO/NaFAC, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing, and the same shall form a part of the appeal order passed by him.

(10) **Enhancement of assessment/ penalty/ reduce the amount of refund:** Where the Commissioner (Appeals) in AU intends to enhance assessment or reduce the amount of refund, then he shall prepare a show-cause notice containing the reasons for such proposed action and send such show-cause notice to the appellant through NFAC.

The appellant shall, within the specified or extended time, furnish his response to the NFAC. The NFAC shall send the appellants' response to the Commissioner (Appeals) in AU. In case a response is not received, the NFAC shall inform about the same to him.

(11) **Passing of the Final Appeal Order:** The Commissioner (Appeals) shall, thereafter:

(a) prepare in writing, an appeal order in accordance with the provisions of Section 251 of the Act, stating the points for determination, the decision thereon and the reason for decision; and

(b) send such order after signing the same digitally to the NFAC along with the details of the penalty proceedings, if any, to be initiated therein;

(12) **Communication of Final Appeal Order:** The NFAC shall, upon receipt of the final appeal order,

(a) communicate such order to the appellant;

(b) communicate such order to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per sub-section (7) of section 250 of the Act;

(c) communicate such order to the Assessing Officer either directly or through the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act;

(d) where initiation of penalty has been recommended in the order, serve a notice on the appellant calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act.

The appeal may be transferred at any stage of the appellate proceedings, if considered necessary, by an order in accordance with Section 120 of the Act, to such Commissioner (Appeals) as may be specified in the order.

No personal appearance in the Appeal Centres or Units & Vested Right of Personal Hearing through Video Conferencing

(1) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this scheme before the income-tax authority at the National Faceless Appeal Centre or appeal unit set up under this Scheme.

(2) The appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the Commissioner (Appeals), through the National Faceless Appeal Centre, under this Scheme.

(3) The concerned Commissioner (Appeals) shall allow the request for a personal hearing and communicate the date and time of the hearing to the appellant through the National Faceless Appeal Centre.

(4) Such hearing shall be conducted through video conferencing or video telephony, including the use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

(5) Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) under this Scheme, exclusively through video conferencing or video telephony, including the use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

(6) The Board shall establish suitable facilities for video conferencing or video telephony, including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the appellant, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such appellant or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end.

Penalty proceedings to be initiated by same Commissioner (Appeals): The Commissioner (Appeals) has been authorized to send a notice to the appellant through the NFAC to initiate any penalty proceedings. The same Commissioner (Appeals) who has completed the appeal proceedings is authorized to conduct penalty proceedings.

No exemption from paying tax in case of a non-filer of return: Proviso to Section 249(4)(b) provides that where an assessee has not filed the return of income, the CIT(A) shall not admit appeal unless an amount equal to the advance tax payable by him has been paid. However, for good and sufficient reasons recorded in writing, the CIT(A) may exempt the assessee from the requirement of payment of such tax.

Orders passed by Commissioner (Appeals) to be digitally signed: Under the new Faceless Appeal Scheme, all the orders (appeal order, penalty order, or rectification order) shall be signed digitally by the Commissioner (Appeals) before sending to National Faceless Appeal Centre.

How to file Rectification

An application for rectification of appellate order passed by CIT (Appeals), where there is "mistake apparent from record" u/s 154 of IT Act, may be filed through the registered account on the Income Tax e-filing portal.

Grievance redressal mechanism

To redress the grievances of taxpayer in respect of faceless appeal proceedings a dedicated email id *samadhan.faceless.appeal@incometax.gov.in* is in place.

For detailed reading of Faceless Appeal Scheme, 2021 students are advised to visit the following **weblink:** ***https://incometaxindia.gov.in/pages/faceless-scheme.aspx***

POWERS OF THE JOINT COMMISSIONER (APPEALS) OR COMMISSIONER (APPEALS) (SECTION 251)

In disposing of an appeal, Joint Commissioner (Appeals) or the Commissioner (Appeals) shall have the following powers:

1. In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment. However, where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.
2. In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as to either enhance or reduce the penalty.
3. In any other case, he may pass such orders in the appeal as he deems fit.

The Joint Commissioner (Appeals) or Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

While disposing an appeal, Joint Commissioner (Appeals) or the Commissioner (Appeals) may consider and decide the facts arising out of the proceedings which in respect of order appealed against were carried notwithstanding that such matter was not raised before the Joint Commissioner (Appeals) or Commissioner (Appeals) by the appellant.

In an appeal against the order of assessment in respect of which the proceedings before the Settlement Commission abates under the section 245HA, the Commissioner (appeals) can confirm, reduce, enhance or annul the assessment after taking into consideration of the following -

1. the material and other information produced by the assessee before the Settlement Commission
2. the results of the enquiry held by the Settlement Commission
3. the evidence recorded by the Settlement commission in the course of proceedings before it
4. such other material as may be brought on his record.

APPELLATE TRIBUNAL (SECTION 252)

The Central Government constituted an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act. The Income Tax Appellate Tribunal (ITAT) is constituted and works under the Ministry of Law. It is thus a body outside the administrative control of the Central Board of Direct Taxes.

The Appellate Tribunal is not an Income-tax Authority in the sense of being an integral part of the department. On the contrary, by its constitution, powers and jurisdiction, not to speak of the manner of their recruitment, the Tribunal is an independent arbitral tribunal. The proceedings before it are advisory. It has also the trappings of a judicial body in the sense that it has to deal with the Department on the one side, and the assessee on the other in as much as they face each other as opposing parties. In such a situation the Tribunal has to decide only those issues which are properly raised before it by the one or the other party in the appeal or in the cross objections. Under the Act, the Tribunal has got to decide an appeal and not merely give it a disposal by dismissing it for default of appearance. This, however, does not mean that the Tribunal has got to take upon themselves the responsibility of finding facts or points of law which are not urged by the Department or the assessee, as the case may be. *CIT v. A. C. Paul (1983) 142 ITA 811 (Mad.).*

The Tribunal is the final Authority and ordinarily, if after considering the matters in the proper perspective and after surveying all material which is available to it, the Tribunal arrives at some conclusion one way or the other, that conclusion would have to be respected, unless it can be regarded as impossible or perverse. *CIT v. Lalchand BhabutmalJain (1985) 151ITR 360 (Bom.).*

APPEALABLE ORDERS BEFORE ITAT [SECTION 253(1) AND (2)]

Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order.

1. An order passed by Commissioner (Appeals) under Section 154 ordering a rectification of mistake, or Section 158BFA or under Section 250 in connection with the disposal of an appeal or Section 271 imposing a penalty for failure to furnish return etc. or section 270A or Sections 271A or 272A or section 271AAB, or section 271AAC, or section 271AAD or section 271J or section 272A;
2. An order passed by a Joint Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271AAC, section 271AAD or section 271J
3. An order passed by an assessing officer under Clause (c) of Section 158BC, in respect of search initiated under Section 132 or books of account other documents or any assets requisitioned under Section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997.
4. An order passed by a Principal Commissioner or Commissioner under Section 12AA or 12AB relating to registration of trust or Section 80G(5)(vi) or under Section 263 relating to revision of orders prejudicial to revenue or section 270A or under section 271 or under Section 272A penalty for failure to answer question, sign statements, allow inspection etc., on or under Section 154 rectifying a mistake, or an order passed by a Chief Commissioner, or a Director General or a director under Section 272A.
5. An order passed by an Assessing Officer under Sub-section (1) of Section 115VZC.
6. An order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order
7. An order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C with the approval of the Principal Commissioner or Commissioner as referred to section 144BA(12) or an order passed under section 154 or section 155 in respect of such order.
8. An order passed by the prescribed authority under sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.
9. An order passed by prescribed authority under section 10(23C)(iv) and 10(23C)(v) shall also be appealable before the Appellate Tribunal.
10. An order passed of penalty under section 271J as imposed by Commissioner (Appeals).

The Commissioner may, if he objects to any order passed by Joint Commissioner (Appeal) or Commissioner (Appeals) under Section 154 or 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

PROCEDURE FOR FILING APPEAL BEFORE APPELLATE TRIBUNAL [SECTION 253(3), (4) & (6)]

Every appeal to the Appellate Tribunal shall be filed within 2 months from the end of the months in which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order has been preferred by the other party may, within thirty days of the receipt of notice, file a memorandum of cross objections, verified in the prescribed manner, against any part of the order. The Appellate Tribunal has to dispose of the such memorandum as if it were an appeal presented within the specified period.

The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the

expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.

An appeal to the Appellate Tribunal shall be in the prescribed form 36. In case of appeal by the taxpayer, the form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under section 140. and be accompanied by a fees of:

(a) Rs. 500 where the assessed income/loss is 1,00,000 rupees or less.

(b) Rs. 1,500 where the assessed income/loss is more than one hundred thousand rupees but not more than two hundred thousand rupees.

(c) One percent of the assessed income, subject to a maximum of ten thousand rupees where the assessed income is more than two hundred thousand rupees,

(d) Rs. 500 in any other case, except in case of an appeal filed by the department or a memorandum of cross objections.

An application for stay of demand has to be accompanied by a fee of Rs. 500.

Form of appeal and memorandum of cross-objections to Appellate Tribunal

An appeal to the Appellate Tribunal shall be made in Form No. 36 . In making an appeal to the Tribunal, the following documents shall be sent in triplicate.

(a) The memorandum of appeal.

(b) The grounds of appeal.

(c) Copy of the order appealed against (including one certified copy).

(d) Copy of the grounds of appeal and statement of facts filed before the Joint Commissioner (Appeal) or Commissioner (Appeals).

(e) Copy of the order of the Assessing Officer. (In case of appeal against penalty order – copies of relevant assessment order, In case of appeal against order under section 143(3), read with section 144A - copies of the directions of the Joint Commissioner under section 144A, In case of appeal against order under section 143, read with section 147 - copies of original assessment order, if any)

(f) Challan for payment of requisite fee.

Where the appellant desires to refer to any documents or evidence he is permitted to file the same with Tribunal in the form of a paper book within one month from the date of filing the appeal. Though the prescribed period in one month, it will be preferable to file the same along with the appeal. Where an appellate order by the Commissioner (Appeals) is passed as a consolidated order for a number of years, appeals to the Tribunal shall be filed separately for each year.

On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT. A memorandum of cross-objections to the Appellate Tribunal shall be made in Form No. 36A and where the memorandum of cross-objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross-objections and the form of verification appended thereto shall be signed by the person specified.

Submission of Paper Book

The appellant or the respondent may submit a paper book. A paper book is to be submitted in duplicate and should contain documents or statements or other papers referred to in the assessment order or the appellate order on which appellant/respondent wants to rely.

The paper book should be duly indexed and page numbered. It should be filed at least a day before the hearing

of the appeal. It should be filed along-with the proof of service of copy of the paper book to the opposite party at least a week before. Each paper in the paper book is to be certified as true copy by the party filing the same. The delay in filing the paper book may be condoned in genuine cases of delay.

The ITAT can also on its own direct the preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal. Additional evidence, if any, should be filed separately and should not form part of the paper book.

Filing of Additional Evidence

Filing of additional evidence of any kind, either oral or documentary cannot be filed before the ITAT. However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.

ORDER OF APPELLATE TRIBUNAL (SECTION 254)

The Appellate Tribunal may, after giving both the parties to appeal an opportunity of being heard, pass such orders on any appeal as it may think fit. [section 254(1)]. Sub-section (2A) provides that in every appeal, the Appellate Tribunal, where it is possible may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under Section 253(1). Sub-section (2B) provides that the cost of any appeal to the Appellate Tribunal shall be at the discretion of the Tribunal.

The Tribunal's decision would have binding effect within the jurisdiction and has a persuasive value outside its jurisdiction.

The ITAT may, on an application made by the taxpayer and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under section 253(1).The stay shall be granted by the ITAT only when the assessee has 'deposited' or 'furnished security' to the extent of 20% of his tax liabilities (i.e. tax, interest, fee, penalty or any other sum payable under the provisions of this Act). (Inserted by the Finance Act, 2020, Applicable w.e.f. Assessment Year 2020 -21)

Section 254(2A) pertaining to stay of demand by the Appellate Tribunal has been modified as follows:

1. Initially the Tribunal can pass an order of the stay only for a period not exceeding 180 days from the date of the order staying the demand subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.
2. The Tribunal shall dispose of appeal within the aforesaid period.
3. If appeal is not disposed of within the aforesaid period, the period of stay may be extended. The total period of stay cannot be more than 365 days reckoned from the beginning of the period. Extension is possible only if assessee makes an application and has complied with the condition referred to in the first proviso and delay is not attributable to assessee.
4. Appeal shall be disposed of by the Tribunal within the extended period.
5. If appeal is not disposed of within the extended period or periods, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

The Appellate Tribunal shall send a copy of any orders passed to the assessee and to the Commissioner. On question of fact, the order passed by the Appellate Tribunal on appeal shall be final. An order made by the Appellate Tribunal shall be sufficiently comprehensive and self-contained. It should be possible to ascertain from the order all the relevant facts and the questions arising on the appeal. It should also

disclose what were the contentions of the parties and should state why and for what reasons those contentions were repelled.

No limitation has been placed on the powers of the Commissioner (Appeals) or the Appellate Tribunal under Section 251(1) or 254(1). The only limitation on their appellate jurisdiction is that they cannot go into the question of propriety of ex-parte proceeding or a best judgment assessment. The quantum of assessment, the quantum of tax or the question of registration of a firm can always be gone into. **Vishnu Kumar Gupta v. CIT (1983) 143 ITR 169 (All).** However, the power of stay is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out, the Tribunal will consider whether to stay the recovery proceedings. Stay will be granted only in deserving and appropriate cases and where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the dependency of the appeal before it.

Section 254(1) empowers the Appellate Tribunal to give its decision on the grounds urged and it can pass appropriate orders. It is not open to the Tribunal itself to raise a ground or permit the party who had not appealed to raise a ground which will work adversely on the appellants.

Under Section 254(2), the Appellate Tribunal has got ample power to rectify a mistake apparent from record suo moto. If the mistake is brought to the notice of the Tribunal by the parties to the appeal, the Tribunal is empowered to rectify the same. *Addl. CIT v. ITAT (1983) 139ITR 615 (AP).*

The third proviso to sub-section (2A) provides that if such appeal is not decided within the period allowed originally or the periods so extended or allowed, the order of stay shall stand vacated after expiry of such period or periods.

The intention behind these provisions has been very clear that the Appellate tribunal cannot grant stay either under the original order or any other subsequent order, beyond the period of 365 days in aggregate.

If the Tribunal is unable to decide the appeal on the basis of materials before it, it may admit fresh evidence and decide the appeal. It may also keep the appeal pending and direct any one of the subordinate authorities to ascertain further facts.

Rectification of Appellate Order

The ITAT may, at any time within 6 months from the end of the month in which the order was passed, rectify any mistake apparent from record, amend any order passed by it if the mistake is brought to its notice by the taxpayer or Assessing Officer. However, where such amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing a liability of the taxpayer, it shall not be made unless the Appellate Tribunal has given a notice to the taxpayer of its intention to do so and has allowed the taxpayer a reasonable opportunity.

Faceless Proceedings before ITAT

To impart greater efficiency, transparency and accountability for the purpose of disposal of appeals by the Appellate Tribunal, the Central Government make a scheme by:

a) Eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;

b) Optimizing utilization of the resources through economics of scale and functional specialization;

c) Introducing an appellate system with dynamic jurisdiction.

The Central Government may, for the purpose of giving effect to the scheme, issue notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

PROCEDURE OF APPELLATE TRIBUNAL (SECTION 255)

The powers and functions of the Appellate Tribunal may be exercised and discharged by benches constituted by the President of the Appellate Tribunal from amongst the members thereof. The bench shall consist of one judicial member and one accountant member.

The President or any other member of the Appellate Tribunal, authorised in this behalf by the Central Government, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose, total income as computed by the Assessing Officer in the case does not exceed Rs. 60,00,000. The President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority if there is a majority. But if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal. Such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case including those who first heard it.

The Appellate Tribunal shall have the power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Benches shall hold their sittings.

The Appellate Tribunal shall have, for the purpose of discharging its functions, all the powers which are vested in the Income-tax authorities under Section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding and for the purpose of Section 196 of the Indian Penal Code, the Appellate Tribunal shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure.

The Appellate Tribunal is a final fact-finding authority and if it arrives at its own conclusions or facts after the consideration of the evidence before it, the Court will not interfere. It is necessary, however, that every fact 'for' and 'against' the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would have clearly indicated what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them, and what were the findings reached on the evidence on record before it.

The ITAT may, at any time within 6 months from the end of the month in which the order was passed, rectify any mistake apparent from record, amend any order passed by it if the mistake is brought to its notice by the taxpayer or Assessing Officer. However, where such amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing a liability of the taxpayer, it shall not be made unless the Appellate Tribunal has given a notice to the taxpayer of its intention to do so and has allowed the taxpayer a reasonable opportunity.

FACELESS PROCEEDINGS BEFORE ITAT

To impart greater efficiency, transparency and accountability for the purpose of disposal of appeals by the Appellate Tribunal, the Central Government is empowered under section 253(8) to make a scheme by:

a) Eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;

b) Optimizing utilization of the resources through economics of scale and functional specialization;

c) Introducing a team based appellate system for appeal to Tribunal with dynamic jurisdiction.

The Central Government may, for the purpose of giving effect to the scheme, issue notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after 31.03.2025. As soon as may be after the notification is issued, be laid before each House of Parliament.

PROVISION FOR AVOIDING REPETITIVE APPEALS (SECTION 158A)

Section 158A makes provision for avoiding procedure when assessee claims identical question of law is pending before High Court or Supreme Court.

1. **Applicability of the Provisions:** This is applicable in case of an assessee who claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court. [Section 158A(1)]

2. **Submission of a Declaration by Assessee:** He may furnish to the Assessing Officer or the appellate authority, as the case may be, will give an online declaration in the Form 8 and verified in the prescribed manner, that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261. [Section 158A(2)]

3. **Report to be sought from the Assessing Officer:** Where a declaration under sub-section (1) is furnished to any appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim made by the assessee. Where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard in the matter, the appellate authority shall allow him such opportunity. [Section 158A(3)]

4. **Admission or Rejection of the Claim of Assessee:** The Assessing Officer or the appellate authority, as the case may be, may, by order in writing, — (i) admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or (ii) reject the claim if he or it is not so satisfied. [Section 158A(4)]

5. **Order when claim admitted:** Where a claim is admitted under sub-section (3) (a) the Assessing Officer or, as the case may be, the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and (b) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

6. **Applicability of decision of High Court and Supreme Court :** When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority, as the case may be, shall, if necessary, amend the order referred to in clause (a) of sub-section (4) conformably to such decision.

7. An order under sub-section (3) shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision under this Act.

PROCEDURE WHERE AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURTS OR SUPREME COURT (SECTION 158AB)

Section 158AA of the Act provides that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee (relevant case) is identical with a question of law arising in his case for another assessment year (other case) which is pending in appeal before the Supreme Court against an order of High Court which was in favour of assessee, he may direct the Assessing Officer to make an application to the Appellate Tribunal stating that an appeal on the question of law in the relevant case may be filed when the decision on the question of law becomes final in the other case, subject to the acceptance of the same by the assessee. However no such direction shall be given on or after the 1st day of April, 2022.

If such a principle could be applied to cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available, the filing of appeal in such cases can be avoided to reduce the amount of litigation.

Therefore, to provide a procedure when an appeal by revenue is pending on an identical question of law, section 158AB is introduced with effect from 1st April 2023. The detail procedures are as follows.

1. **Deferment of any appeal against an identical question of law pending before High Court or Supreme Court:** This provision provides that, where the collegium (comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the Board) is of the opinion that:

   (a) any question of law arising in the case of an assessee for any assessment year (such case being herein referred to as the relevant case) is identical with a question of law arising,

      (i) in his case for any other assessment year; or

      (ii) in the case of any other assessee for any assessment year; and

   (b) such question is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, which is in favour of such assessee,

   the collegium may, decide and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under section 253(2) or to the jurisdictional High Court under section 260A(2) in the relevant case against the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

2. **Direction to Assessing Officer:** On receipt of communication from the collegium, the Principal Commissioner or the Commissioner shall, direct the Assessing Officer to make an application to the Appellate Tribunal or the jurisdictional High Court, as the case may be, in the prescribed form as may be prescribed within a period of 120 days from the date of receipt of the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case.

3. **Acceptance of question law by the assessee:** The Principal Commissioner or Commissioner shall direct the Assessing Officer to make an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. In case no such acceptance is received, the Principal Commissioner or Commissioner shall, notwithstanding anything contained in section 253(3) or section 260A (2(a), proceed in accordance with the provisions contained in section 253(2) or section 260A(2)(c).

4. Where the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, is not in conformity with the final decision on the question of law in the other case, as and when such order is received, the Principal Commissioner or Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be.

5. **Time limit for filing appeal:** The appeal in relevant case as stated at 4 above shall be filed within a period of 60 days to the Appellate Tribunal or 120 days to the High Court, as the case may be, from the date on which the order of the jurisdictional High Court or the Supreme Court in the other case is communicated to the Principal Commissioner or the Commissioner, in accordance with the procedure specified by the CBDT.

APPEAL BEFORE HIGH COURT (SECTION 260A & 260B)

Sections 260A and 260B are inserted w.e.f. October 1, 1998. Section 260A provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law. The Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the High Court against the order of the ITAT in those cases in which the tax effect does not exceeds Rs.200 lakhs (revised from Rs.100 lakhs vide CBDT Circular No.9/2024 dated .17.09.2024).

The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be filed within 120 days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner and shall be filed in the form of memorandum of appeal precisely stating the substantial question of law involved. The High Court has the power to condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within the period.

If the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated, and the respondents shall at the hearing of the appeal, be allowed to argue that the case does not involve such question. However, the High Court may for reasons to be recorded, hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

The High Court may determine any issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal on such substantial question of law.

Where the High Court delivers a judgment in an appeal filed before it under Section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of judgment [Section 260(1A)].

Section 260B provides that an appeal filed under Section 260A shall be heard by a bench of not less than two judges of the High Court and shall be decided in accordance with the opinion such Judges or the majority, if any. Where, however, there is no such majority, the part of law upon which they differ shall be referred to one or more of the Judges of the High Court and shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

The High Court also has power to stay a proceeding for recovery of demand arising out of the assessment order pending disposal of appeal.

APPEAL BEFORE SUPREME COURT (SECTION 261)

The aggrieved party is entitled to appeal to the Supreme Court against the judgment delivered by the High Court on the reference application made to it by the Tribunal (under Section 256) against an order made under Section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under Section 254 on or after that date provided the High Court certifies the case to be fit for appeal to the Supreme Court. The right of appeal is, therefore, conditional and may be availed of only if the High Court gives a certificate of such fitness.

The Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the Supreme Court against the order of the High Court in those cases in which the tax effect does not exceeds Rs.500 lakhs (revised from Rs.200 lakhs vide CBDT Circular No.9/2024 dated.17.09.2024).

The High Court could certify the case as a fit one for appeal and grant leave to the Supreme Court if a substantial question of law is involved or if the question is likely to come up in successive year or if the question is otherwise of great public or private importance.

An application of fitness for appeal to the Supreme Court has to be made within 60 days from the date of High Court's judgment (under Article 132 of the Schedule to the Limitation Act, 1963). The time required for taking a certified copy of the High Court's judgment is to be excluded in computing such period of limitation.

If the High Court refuses to certify a case to be fit for appeal to the Supreme Court, an application may be made to the Supreme Court (under Article 136 of the Constitution) for special leave to appeal against the decision of the High Court.

The provisions of the Code of Civil Procedure, 1908 relating to the appeal to the Supreme Court are applicable in the case of appeals under Section 261 in the same manner as they are applicable in the case of appeals from decrees of a High Court. [Section 262(1)]

Where the judgment of the High Court is changed or reversed in the appeal, effect is given to the order of the Supreme Court [Section 262(3)]. The law declared by the Supreme Court is binding on all courts within the territory of India under Article 141 of the Constitution.

On the receipt of a copy of judgment, the Appellate Tribunal has to pass such orders as are necessary to dispose of the case conformably to such judgment.

To award the cost of an appeal is at the discretion the Supreme Court [Section 262(2)]. It would be open to the Court not to award costs even to the party which has succeeded in the appeal before it. If the Supreme Court awards costs to a party and the party has not complied with the order, a petition may be made to the appropriate High Court for execution of the order of the Supreme Court (Section 266). The High Court may transmit the order for execution to any court subordinate to it (Section 266).

Section 257 enables the Appellate Tribunal to make a direct reference to the Supreme Court if the Tribunal is of the opinion that, on account of a conflict in the decision of High Court in respect of any particular question of law, it is expedient that a reference should be made directly to the highest court.

SUMMARY				
Particulars	**246 / 246A**	**254**	**260A**	**261**
Appellate Authority	**JCIT / CIT (A)**	**ITAT**	**High Court**	**Supreme Court**

Time limit for Appeal related to assessment / penalty and any other case	30 days from the receipt of the order serving of demand in case assessment / penalty and in any other case service of intimation of order sought to be appealed against	2 month from the end of the month in which the order sought to be appealed against is communicated	120 days from the date of receipt of order appealed against	-
Time limit for disposal of appeal	1 Year from the end of the FY	4 Year from the end of the FY	As per Court procedure	As per Court procedure
Application of prescribed Form	35	36	As per Court procedure	As per Court procedure
Fees to be Paid				
Returned Income up to Rs. 1 lakh	Rs. 250	Rs. 500	As per Court procedure	As per Court procedure
More than Rs. 1 lakh up to Rs. 2 lakhs	Rs. 500	Rs. 1500	As per Court procedure	As per Court procedure
More than Rs. 2 lakhs	Rs. 1000	1% of income (Max Rs 10,000)	As per Court procedure	As per Court procedure
Appeal for other than Income	Rs. 250	Rs. 500	As per Court procedure	As per Court procedure

REVISION BY THE COMMISSIONER OF INCOME TAX (SECTIONS 263 AND 264)

The right to file such appeals against the orders of the Assessing Officer is not available to the Department. It is for this reason that the Commissioner has been vested with revisional powers under Section 263, where the order of the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. But such revisional power can be exercised only in respect of orders which are not the subject matter of appeals. The reason is that once an assessment order is appealed against, the Commissioner (Appeals) has got the powers to enhance the assessment under Section 263 and a right of appeal up to the Tribunal is provided to the assessee against the orders of the Assessing Officer. In the following cases Commissioner of Income-tax can revise an order passed by the Assessing Officer:

REVISION OR ORDER BY THE COMMISSIONER OF INCOME TAX		
Revision of orders prejudicial to the interest of Revenue (Section 263)	**Revision of order in the interest of Assessee (Section 264)**	**Circumstances in which no revision can be made (Section 264(4))**

Revision can be only of the order of Assessing Officer	Revision of order of subordinate authority only (Section 264(1) and Explanation 2)	If the order is appealable to Commissioner (Appeals), such order cannot be revised until the time within which such appeal may be made expires.
Order erroneous and prejudicial to the interest of revenue (Section 263(1)	Suo moto revision (Section 264(1) and (2))	The order is appealable to the Commissioner or the Appellate Tribunal, revisional power cannot be exercised until the time within which such appeal may be made expires.
Assessee to be given an opportunity of being heard	Revision on application by the assessee (Section 264(1), (3) & (5))	

REVISION OF ORDERS PREJUDICIAL TO THE INTEREST OF REVENUE (SECTION 263)

Under section 263(1), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order

(a) enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment or

(b) an order modifying the order under section 92CA or

(c) an order cancelling the order under section 92CA and directing a fresh order under the said section.

An order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

The term “record” shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

In case the order referred to in section 263(1) above passed by the Assessing Officer or the TPO has been the subject matter of any appeal, the powers of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner; shall extend and shall always be deemed to have extended to such matters as had not been considered and decided in such appeal.

No order shall be made under sub-section (1) after the expiry **of two years from the end of the financial year** in which the order sought to be revised was passed.

In computing the period, the period of 2 years, time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

It may be noted that the limit of two years does not apply to a revisional order which had been passed in consequences of or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court. Such revisional order may be passed at any time (Section 263(3)).

The word "**erroneous**" includes cases where there has been a failure to make the necessary enquiries. The Commissioner of Income-tax may consider an order of the Assessing Officer to be erroneous not only if it contains some apparent error of reasoning or of law or of fact on the face of it but also because it is a stereotype order which simply accepts what the assessee has stated in his return and fails to make enquiries which are called for in the circumstances of the case. The Assessing Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in return when the circumstances of the case are such as to provoke enquiry.

The words "**prejudicial to the interests of revenue**" appearing under Section 263(1) have not been defined in the Act, but they must mean that the order of the Assessing Officer or the Transfer Pricing Officer, as the case may be is such, that it is not in accordance with law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised.

The Allahabad High Courts' decision in ***Commissioner of Income-tax v. Sunder Lal*** **(1974, 96 ITR 310) was followed by it in *Commissioner of Income-tax v. Kashi Nath & Co. 1988, 170 ITR 28*)** holding that the power of the Commissioner of income-tax under Section 263 of the Income-tax Act is quasi-judicial in character. He must give reasons in support of his conclusion that the assessment order is erroneous in so far as it is prejudicial to the interests of the Revenue. If he does not give the reasons, the order can be vitiated. For example, if the Commissioner is of the opinion that the Assessing Officer had allowed deductions in excess of what they were due in a particular case, such order is erroneous and prejudicial to the interests of the revenue. Hence, it may be revised by the Commissioner of Income Tax.

In ***Malabar Industrial Co. Ltd. v. Commissioner Income Tax (1992) 198 ITR 611*** the Kerala High Court held that the words 'prejudicial to the interests of the revenue' are of wide import and they should not be limited to a case where the order passed by the Income-tax Officer (now Assessing Officer) can be considered to be one prejudicial to the revenue administration as such. The question whether an order of the Income-tax Officer is prejudicial to the interests of revenue would depend on the facts of each case and there can be no universal formula applicable to finding out any such prejudicial error. The High Court followed the rule laid down by the Supreme Court in *Tara Devi Aggarwal v. CIT(1973,88 ITR 523)* but dissented from the rule laid down by the Madras High Court in *Venkatakrishna Rice Co. v. CIT (1987,163 ITR 129)*.

The Commissioner can revise an order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be only if it is erroneous and prejudicial to the interests of the revenue; if the order sought to be revised is not prejudicial to the interest of the revenue the Commissioner has no jurisdiction to revise it. The failure of the Assessing Officer to deal with the claim of the assessee in the assessment order may be an error, but an erroneous order by itself is not enough to give jurisdiction to the Commissioner to revise it under Section 263. It must be further shown that the order was prejudicial to the interests of the revenue.

REVISION OF ORDER IN THE INTEREST OF ASSESSEE (SECTION 264)

An assessee aggrieved with the order of the Assessing Officer shall file an appeal before Joint Commissioner (Appeals) / Commissioner (Appeals) under Section 246A and thereafter to the Appellate Tribunal under Section 253. Further, each and every order of the Assessing Officer is not appealable to the appellate authorities under Sections 246A and 253. The assessee may seek justice in such cases by making an application under section

264 to the Commissioner of Income Tax. For example, revision lies to the Commissioner against the levy of penal interest for not furnishing the return of total income within the prescribed time against which no appeal has been provided.

In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and after making such inquiry may pass such order thereon as he thinks fit.

The revisional order passed under Section 264 cannot be prejudicial to the interest of the assessee. The whole subject matter is discussed below -

1. **Revision of order of subordinate authority only (Section 264(1) and Explanation 2)**

   The Principal Commissioner or Commissioner of Income Tax may revise any order of an authority subordinate to him. Deputy Commissioner, Income Tax Officers and Inspectors of Income Tax are subordinate to the Principal Commissioner or Commissioner according to Section 118.

2. **Suo moto Revision (Section 264(1) and (2))**

   The Principal Commissioner or Commissioner may, suo moto call for the record of any proceeding under this Act in which any, order has been passed by any authority subordinate to him.

   He may make such enquiry and may pass such order as he thinks fit but such order cannot be prejudicial to the assessee [Section 264(1)]. Such exercise of the authority is a purely departmental affair and the assessee may know nothing about this.

   While acting suo moto, the Principal Commissioner / Commissioner may revise the order of his subordinate authority within one year from the date of the order sought to be revised [Section 264(2)]. If the order has been made more than one year back, such order cannot be revised by him.

3. **Revision on application of the Assessee [Section 264(1), (3) & (5)]**

   The assessee is entitled to make an application to the Principal Commissioner or Commissioner of Income- tax for the revision of any order passed by an authority subordinate to him. Such an application can be made within one year from the date on which the order in question was communicated to him or from the date on which he otherwise came to know of it, whichever is earlier [Section 264(3)]. The Principal Commissioner or Commissioner is empowered to admit a belated application if he is satisfied that the assessee was prevented by sufficient cause from making the application within the prescribed time.

   The application for revision by the assessee is always to be accompanied by a fee of Rs. 500 [Section 264(5)]. On receipt of the revision application, the Principal Commissioner or Commissioner may call for the record. He may make such enquiry and pass such order as he deems fit. Such an order should not be prejudicial to the assessee [Section 264(1)].

   It is obligatory on the Principal Commissioner or Commissioner to pass an order under Section 264 within a period of one year from the end of financial year in which the application is made for revision. In computing the period of limitation, the time taken in giving an opportunity to the assessee to be re-heard (under Section 129) and any period during which any proceeding under this Section is stayed by an order or injunction of any court is excluded.

   Though an order has, to be passed within one year, an order in revision may be passed at any time in consequence of or to give effect to any findings or directions contained in an order of the Appellate Tribunal, High Court or the Supreme Court.

There are two important points of distinction between the cases: (i) where the Principal Commissioner or Commissioner makes suo moto revision; and (ii) where he makes a revision on the application of the assessee. While acting suo moto, he can pass the revisional order only within one year from the date of the order sought to be revised. There is no such time limit when the revisional order is passed on the basis of application filed by the assessee. Once the application is made within the period of limitation prescribed therefor, or after the condonation of delay, the order may be passed at any time thereafter. Secondly, while acting suo moto, the Commissioner acts in the exercise of his administrative jurisdiction and, hence, he is not bound to give a hearing to the assessee. In fact the review is purely a departmental affair in such cases. On the other hand, when he is moved by the assessee for the said purposes, the jurisdiction conferred on him is a judicial one and, hence, he must give an opportunity to the assessee to put forward his case.

4. Nature of the order (Section 264)

The Principal Commissioner or Commissioner may pass such order as he thinks fit provided such order is not prejudicial to the assessee. This is so whether the Commissioner acts suo moto, or on the revision application of the assessee. An order of the Principal Commissioner or Commissioner passed in revision can be said to be prejudicial to the assessee only when he is, as a result of it, placed in a different and worse position than that in which he was placed by the order under review. If the Principal Commissioner or Commissioner effects a reduction of income under one head and an increase under another but, on the whole reduces the assessment, his order cannot be said to be prejudicial to the assessee. Though the Principal Commissioner or Commissioner may not change the order of the subordinate authority to the prejudice of the assessee, he may not give the relief asked for by the assessee. An order of the Principal Commissioner or Commissioner declining to interfere with the order of the subordinate authority cannot be deemed to be an order prejudicial to the assessee (Explanation 1 to Section 264). The power to pass such orders as he deems fit is not an arbitrary one to be exercised according to his fancy. He must act according to the rules of reason and justice, not according to private opinion, according to law not humour. His discretion is not to be arbitrary, vague and fanciful, but legal and regular. It is a power coupled with duty to exercise it in the interest of justice to the assessee.

CIRCUMSTANCES IN WHICH NO REVISION CAN BE MADE [SECTION 264(4)]

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner shall not revise any order under section 264 in the following cases—

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order has been made the subject of an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal.

Remedy against the Revisional Order

An order of the Commissioner passed under Section 264 is not appealable to the Tribunal. Nor does a reference lie against such an order to the High Court since a reference to the High Court lies only against an order passed by the Tribunal. Since the order of the Commissioner is judicial or quasi-judicial in character, it is within the ambit of the High Court's jurisdiction under Article 226 of the Constitution and a petition for a writ of certiorari to quash an unjust or illegal order of the Commissioner is maintainable.

Faceless Revision of Order (Section 264A)

(i) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of revision of orders under section 263 or section 264, so as to impart greater efficiency, transparency and accountability by:

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based revision of orders, with dynamic jurisdiction.

(ii) Every notification has to be laid down before each House of Parliament as soon as may be after the notification is issued

Faceless effect of Order (Section 264B)

(i) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of giving effect to an order under section 250, 254, 260, 262, 263 or 264, so as to impart greater efficiency, transparency and accountability by:

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based giving of effect to orders, with dynamic jurisdiction.

(ii) Every notification has to be laid down before each House of Parliament as soon as may be after the notification is issued

MONETARY LIMIT FOR REGULATING FILING AN APPEALS BY INCOME TAX AUTHORITIES (SECTION 268A)

Appeal shall be filed before appellate Tribunal, High Court and Supreme Court by income tax authority only where the tax effect of appeal exceeds the monetary limits as specified in the per CBDT Circular No.9/2024 dated 17.09.2024). Therefore, the Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) in those cases in which the "tax effect" exceed the monetary limits stated below.

Appeal in Income tax matter	Revised Monetary Limit for Filing Appeal (w.e.f. 17th September 2024)
Before ITAT	INR 60,00,000
Before High Court	INR 2,00,00,000
Before Supreme Court	INR 5,00,00,000

"Tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed Issues"). However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned

loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every taxpayer. If in the case of a taxpayer the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified above. No appeal shall be filed by department in respect of an assessment year or years in which the tax effect is less than the monetary limit specified above.

However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In case where a composite order / judgment involves more than one taxpayer, each taxpayer shall be dealt with separately.

Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified above or there is no tax effect.

(i) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(ii) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultravires, or

(iii) Where Revenue Audit's objection in the case has been accepted by the Department.

(iv) Writ matters

(v) Matters pertaining to other direct taxes, i.e., other than Income-Tax

(vi) Where the tax effect is not quantifiable or not involved, such as case of registration of trust or institution under section 12A.

(vii) Where the addition relates to undisclosed foreign assets/bank accounts.

CONDONATION OF DELAY IN FILING APPEAL OR REVISION APPLICATION WHERE PERIOD OF LIMITATION IS PROVIDED

A delay in the making of an application or the filing of an appeal for which a period of limitation is prescribed under the Act is condoned only if there is a specific provision in the relevant section itself enabling such condonation. The details of relevant provisions with decisions of different authority are given below for reference.

S. No.	Section	Remarks
(i)	154	Application for rectification has to be filed before AO/JCIT(A)/CIT(A) within the prescribed period. There is no provision or condonation of delay.
(ii)	254(2)	There is no power for condonation of delay, if rectification application is filed before Tribunal beyond the statutory period. [refer- Ms. Shamsunissa Begum v. Dy. CIT [2017] 83 taxmann.com 96 (Bang. - Trib.); Bharat Petroleum Corp. Ltd. v. Asstt. CIT [2014] 49 taxmann.com 397

S. No.	Section	Remarks
(iii)		Dispute Resolution Panel has no power to condone the delay in filing objection beyond stipulated period of thirty days from date of receipt of draft assessment order. [refer- Inno Estates (P.) Ltd. v. DRP [2018] 96 taxmann.com 646
(iv)	264	The Commissioner has power to condone the delay in filing revision applications u/s 264. ((refer- EBR Enterprises v. UOI [2018] 89 taxmann.com 194 (Bom.)
(v)	249	Commissioner (Appeals) may admit an appeal after the expiry of period provided in section 249(2) if he is satisfied that appellant had sufficient cause for not presenting the appeal within that period. [refer- Saiyana Warehouse (P.) Ltd. v. Asstt. CIT [2014] 51 taxmann.com 60 (Mad.)]
(vi)	253	Tribunal may admit an appeal, or cross-objection, after the expiry of prescribed period, if it is satisfied that there was sufficient cause for not presenting it within that period.
(vii)	269G & 269H	Condonation of delay beyond statuary period in filing appeal to the tribunal / High Court is provided on showing sufficient cause.
(viii)	256(1), 256(2A) and 260A(2A)	Condonation of delay beyond statuary period in references / appeal to the High Court is provided where there is a satisfaction about sufficient cause of such delay.
(ix)	Rule 46A of IT Rules	Condonation of delay for admission of additional evidence before CIT(A) provides on showing sufficient cause.
(x)	Rule 24 of ITAT Rules	Providing for restoration of ex-parte appeal on showing sufficient cause. (refer-Dr. Gopal Dass Agarwal v. CIT [2019] 101 taxmann.com 187(All.)),
(xi)	Rule 25 of the ITAT Rules	Providing for restoration of appeal on showing sufficient cause for non-appearance of respondent.

OFFENCES AND PENALTIES

An assessee should note that compliance with legal formalities is less costly than the payment of penalties or interest on tax dues. There are several formalities to be complied with to avoid any penalty. In this connection, reference may be made to the following table summarizing the defaults and penalties therefor.

Chapters XVII and XXI of Income-tax Act, 1961, contain various provisions empowering an Income-tax Authority to levy penalty in case of certain defaults. The various types of penalties are briefly described in the table given below:

Section	Type of Default	Quantum of Penalty	
		Minimum Penalty	Maximum Penalty
1	2	3	4
140A(3)	Failure to pay the self-assessment tax or interest and fee or part thereof or both under Section 140A(1)	Such amount as the Assessing Officer may impose	Tax in arrears
158BFA	Determination of undisclosed income of block period	Minimum 100% of tax leviable in respect of undisclosed income	Maximum 300% of tax leviable in respect of undisclosed income
221(1)	Failure to make payment of tax and interest payable under Section 220(2) within the prescribed time limit	Such amount as the Assessing Officer may impose	Tax in arrears
234E	Failure to file statement within time prescribed in section 200(3) or in proviso to section 206C(3)	Fees of Rs. 200 per day during which failure continues	Amount of tax deductible or collectible
234F	Failure to file income tax return within the time as mentioned under section 139	Fees of Rs. 5,000 if return is furnished after due date specified under section 139(1) Note: Fees of Rs. 1,000 if total income of the person does not exceed Rs. 5,00,000	
234G	Fee for default in submission of statement/certificate prescribed under section 35/ Section 80G	Rs. 200 per day	
234H	Fee for default in intimating the Aadhaar Number	Rs. 1,000	
270A	Penalty for under reporting and misreporting of income	50% of tax payable on underreported income	However, if under-reported income is in consequence of any misreporting thereof by any person, the penalty shall be equal to 200% of the amount of tax payable on under-reported income

Section	Type of Default	Quantum of Penalty	
		Minimum Penalty	Maximum Penalty
1	2	3	4
271A	Failure to keep, maintain or retain books of account etc. as required under Section 44AA	Rs. 25,000	Rs. 25,000
271AA(1)	Failure to keep and maintain information and document in respect of international transaction or specified domestic transaction or fails to report such transactions or maintains or furnishes an incorrect information or document.	A sum equal to 2% of the value of each international transaction or specified domestic transaction.	
271AA(4)	If any person fails to furnish the information and the document as required under sub-section (4) of section 92D.	Rs. 5,00,000	
271AAB	Undisclosed income found during search where search has been initiated on or after 15.12.2016.	30% or 60% of undisclosed income, as the case may be.	
271AAC	Penalty where income includes any income referred to in Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D.	10% of tax payable on undisclosed income	
271AAD	If during any proceedings under the Act, it is found that in the books of accounts maintained by assessee, there is a false entry; or Any entry relevant for computation of total income of such person has been omitted to evade tax liability.	100% of such false entries or omitted entry	
271B	Failure to get accounts audited under Section 44AB or furnish audit report along with return of income.	One-half per cent of Total Sales, Turnover or Gross Receipts	Rs. 1,50,000
271BA	Failure to furnish report under Section 92E.	Rs. 1,00,000	
271C	Failure to deduct tax at source or failure to pay wholly or partly the tax u/s 115-0(2) or second proviso to Section 194-B.	A sum equal to the amount of tax omitted to be deducted or paid	
271CA	Failure to collect tax at source	100% of tax sought to be collected	
271D	Taking any loan or deposit or specified sum in contravention of Section 269SS. "Specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.	A sum equal to the amount of loan or deposit or specified amount so taken or accepted.	

Section	Type of Default	Quantum of Penalty	
		Minimum Penalty	Maximum Penalty
1	2	3	4
271DA	Receiving of an amount of Rs. 2,00,000 or more otherwise than an A/c payee cheque/ draft/ECS, in contravention of provisions of Section 269ST	A sum equal to the amount of such receipt. However, penalty shall not be imposed, if such person proves that there were good and sufficient reasons for the contravention.	
271DB	Failure to provide facility for accepting payment through prescribed electronic modes of payment as referred to in section 269SU (w.e.f. 1.11.2019)	Rs. 5,000 rupees for every day of default	
271E	Repayment of deposit or specified advance in contravention of Section 269T "Specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not transfer takes place.	A sum equal to the amount of deposit or specified amount	
271FA	Failure to Furnish Statement of Financial Transaction or Reportable Account in Section 285BA(2)	Rs. 500 per day during which such failure continues	
271FA	Failure to Furnish Annual Information Return in Section 285BA(5)	Rs. 1,000 per day of default	
271FAA	Furnishing of inaccurate information in statement of financial transaction or reportable account. Failure to furnish annual information return within the period specified in notice u/s 285BA(5)	Rs. 50,000 Failure to furnish annual information return within the period specified in notice u/s 285BA(5)	
271FAB	Section 9A provides that fund Rs. 5,00,000 management activity carried out by an eligible offshore investment fund through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India (subject to certain conditions). The provision requires that eligible investment fund shall furnish within 90 days from the end of the financial year a statement, in respect of its activities in a financial year, in the prescribed form containing information relating to fulfilment of specified conditions and such other information or documents as may be prescribed. Penalty to be levied if investment fund failed to comply with the requirement.	Rs. 5,00,000	

Section	Type of Default	Quantum of Penalty	
		Minimum Penalty	Maximum Penalty
1	2	3	4
271G	Failure to furnish information or document in respect of international transaction or specified domestic transaction under Section 92D(3).	A sum equal to 2% of the value of each international transaction or specified domestic transaction.	
271GA	Section 285A provides for reporting by an Indian concern if following two conditions are satisfied: (a) Shares or interest in a foreign company or entity derive substantial value, directly or indirectly, from assets located in India; and (b) Such foreign company or entity holds such assets in India through or in such Indian concern. In this case, the Indian entity shall furnish the prescribed information for the purpose of determination of any income accruing or arising in India under Section 9(1) (i). In case of any failure, the Indian concern shall be liable to pay penalty.	(a) a sum equal to 2% of value of transaction in respect of which such failure has taken place, if such transaction had effect of, directly or indirectly, transferring right of management or control in relation to the Indian concern; (b) a sum of Rs. 5,000 in any other case.	
271GB	1. Failure to furnish report under section 286(2) 2. Failure to produce the information and documents within the period allowed under section 271GB(6) 3. Failure to furnish report or failure to produce information/ documents under section 286 even after serving order under section 271GB(1) or 271GB(2) 4. Failure to inform about inaccuracy in report furnish under section 286(2) Or furnishing of inaccurate information or document in response to notice issued under section 286(6).	• Rs. 5,000 per day upto 30 days and Rs. 15,000 per day beyond 30 days. • Rs. 5,000 for every day during which the failure continues. • Rs. 50,000 for every day for which such failure continues beginning from the date of serving such order. • Rs. 5,00,000.	
271H	Fails to furnish statement within the time prescribed in sub-section (3) of section 200 or proviso to section 206C(3) or furnishes incorrect information. However, no penalty shall be payable if tax along with interest has been deposited and the statement has been furnished within one year from the time prescribed.	Rs. 10,000	Rs. 1,00,000

Section	Type of Default	Quantum of Penalty	
		Minimum Penalty	Maximum Penalty
1	2	3	4
271-I	As per section 195(6) of the Act, any person responsible for paying to a nonresident or to a foreign company, any sum (whether or not chargeable to tax), shall furnish the information relating to such payment in Form 15CA and 15CB. Penalty shall be levied in case of any failure.	Rs. 1,00,000	
271J	Furnishing incorrect information in a report or certificate under the provisions of this Act (or rules made thereunder) by a Chartered Accountant or a Merchant Banker or a Registered Valuer.	Rs. 10,000 for each such report or certificate. However, if the concerned person proves that there was reasonable cause for the aforesaid failure, then penalty shall not be imposable.	
272A(1)	Refusal or failure by legally binding person in respect of subject matter of assessment, to: ● answer questions ● sign statement ● attend to give evidence or produce books of account, etc., in compliance with summons under section 131(1) ● comply with notices u/s 142(1)/143(2) or failure to comply with direction issued u/s 142(2A).	Rs. 10,000 for each failure/default.	
272A(2)	Failure to comply with a notice issued under Section 94, to give notice of discontinuance of business/ profession under Section 176(3); fails to furnish returns/ statements specified in Sections 133, 206, 206C,or 285B; fails to allow inspection of (i) register mentioned in Section 134, or (ii) entry in such register, or (iii) allow copies thereof to be taken, fails to furnish return of income under Section 139(4A) or, fails to deliver declaration under Section 197A; fails to furnish certificate under Section 203 or section 206C, fails to deduct and pay tax under Section 226; fails to deduct or pay tax u/s 192(2C), fails to deliver a copy of declaration u/s 206C(1A); fails to deliver the copy of statement within the time specified u/s 200(3) or the proviso to 206C(3); fails to deliver within the time specified u/s 206A(1). However, no penalty shall be payable where statement required u/s 200(3) or proviso to section 206C(3) on or after 1st July 2012.	Rs. 100 for every day of default	

Section	Type of Default	Quantum of Penalty	
		Minimum Penalty	Maximum Penalty
1	2	3	4
272AA	Failure in compliance with Section 133B	Any amount subject to a maximum of Rs.1,000	Rs. 1,000
272B	Failure to comply with provisions relating to PAN or Aadhar as referred to in section 139A/139A(5)(c)/ (5A)/ (5C)	Rs. 10,000 for each default	
272BB	Failure in compliance with Section 230A	Rs. 10,000 for each failure/default	

Note *: No penalty is imposable for any failure under sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1), 273(1)(b), 273(2)(b) and 273(2)(c) if the person or assessee proves that there was reasonable cause for such failure (section 273B).*

Section 273AA provides that a person may make application to the Principal Commissioner/Commissioner for granting immunity from penalty, if (a) he has made an application for settlement under section 245C and the proceedings for settlement have abated; and (b) penalty proceeding have been initiated under this Act. The application shall not be made after the imposition of penalty after abatement.

OFFENCES AND PROSECUTION

Rigorous Imprisonment

Section	Nature of Default	Punishment	Fine
275A	Dealing with seized assets in contravention of the order made by the officer conducting search	Up to 2 years	No Limit
275B	Failure to comply with the provision of section 132(l)(iib)	Up to 2 years	No Limit
276	Removal, concealment, transfer or delivery of property to tax recovery	Up to 2 years	No Limit
276A	Failure to comply with the provisions of section 178(1) & (3) by liquidator of a company	Any period up to 2 years but not less than 6 months in absence of special and adequate reasons	-

Section	Nature of Default	Punishment	Fine
276B	Failure to pay tax to the Government's treasury or failure to pay to the Government tax payable by him as required by section 115-O(2) or second proviso to section 194B	3 months to 7 years	No Limit
276BB	Failure to pay to the Government, tax collected u/s 206C	3 months to 7 years	No Limit
276C(1)	Willful attempt to evade tax penalty or interest imposable or under reports his income under the Act - If tax evaded exceeds Rs. 25,00,000	3 months to 7 years	No Limit
	Willful attempt to evade tax penalty or interest imposable or under reports his income under the Act - If tax evaded less than Rs. 25,00,000	3 months to 2 years	No Limit
276C(2)	Willful attempt to evade the payment of any tax, penalty or interest	3 months to 2 years	No Limit
276CC	Willful failure to file return of income in time u/s 139(1), or section 139(8A) or in Response to notice u/s.142(1) or section 148 or section 153A (Non- Cognizable as per Section 279A) - where tax sought to be evaded exceeds Rs. 25 lakh	6 months to 7 years	No Limit
	Willful failure to file return of income in time u/s 139(1), or section 139(8A) or in Response to notice u/s.142(1) or section 148 or section 153A (Non- Cognizable as per Section 279A) - Any other cases	3 months to 2 years	No Limit
276CCC	Willful failure to furnish in due times the return of total income which is required to be furnished u/s. 158BC.	3 months to 3 years	No Limit

Section	Nature of Default	Punishment	Fine
276D	Willful failure to produce books of account and documents u/s. 142(1) or willful failure to comply with a direction to get the accounts audited u/s. 142(2A)	Any period upto 1 year	No Limit
277	Making a false statement in verification or delivering a false account or statement (non-cognizable as per Sec.279A) - where tax sought to be evaded exceeds Rs. 25 lakh	6 months to 7 years	No Limit
	Making a false statement in verification or delivering a false account or statement (non-cognizable as per Sec.279A) – any other case	3 months to 2 years	No Limit
277A	Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/ leviable under the Act	3 months to 2 years	No Limit
278	Abetment to make a false statement or declaration. (non-cognizable as per, Sec. 279A) - where tax sought to be evaded exceeds Rs. 25 lakh	6 months to 7 years	No Limit
	Abetment to make a false statement or declaration. (non-cognizable as per, Sec. 279A) – any other case	3 months to 2 years	No Limit
278A	Punishment for second and subsequent offences u/s sections 276B, 276BB, 276C(1), 276CC, 276DD, 276E, 277 or 278	6 months to 7 years	No Limit
280(1)	Disclosure of particulars by public servants in contravention of section 138(2)	Up to 6 months	No Limit

No punishment if proved that there was reasonable cause for failure (Section 278AA)

If there is a reasonable cause, it can be offered as a defense against penalty, prosecution, etc. Any failure under section 276A, 276AB or 276B is not punishable if he proves that there was reasonable cause for such failure.

Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.

'Reasonable cause' as applied to human action is that which would constrain people of average intelligence and ordinary prudence. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do.

Provision for Bank Guarantee (Section 281B)

- Section 281B of the Act has been amended so as to provide that Assessing Officer AO' shall revoke provisional attachment of property made under sub-section (1) of the aforesaid section in a case where the assessee furnishes a bank guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.
- To determine the FMV of the property, the AO may, make a reference to the Valuation Officer, who may be required to submit the report of the estimate of the property to the AO within a period of thirty days from the date of receipt of such reference.

LESSON ROUNDUP

- The right to appeal must be given by express enactment in the Act. Therefore, in case there is no provision in the Act for filing an appeal regarding a particular matter, no appeal shall lie. The right to appeal arises where the taxpayer is aggrieved by the order passed by the income-tax authority.
- The assessee may prefer an appeal against the orders of the Assessing Officer to the Joint Commissioner (Appeal) or Commissioner (Appeals), in accordance with the relevant provisions under Section 246 / Section 246A and appeal against the order of the Joint Commissioner (Appeal) or Commissioner (Appeals) can be preferred by the Assessee or the department and such appeal lies with the Appellate Tribunal.
- The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.
- Section 260A provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law.
- The aggrieved party is entitled to appeal to the Supreme Court against the judgment delivered by the High Court.
- Chapters XVII and XXI of Income-tax Act, 1961, contain various provisions empowering an Income-tax Authority to levy penalty in case of certain defaults.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

Multiple Choice Questions (MCQs)

1. The appeal against the order of Appellate Tribunal can be filed to High Court:
   (a) for any matter in the order
   (b) only if any question of fact is involved
   (c) only if any substantial question of law is involved
   (d) None of the above

   Answer: c
2. An Appeal to High Court against the order of ITAT is to be filed within a period of from the date on which the ITAT's order is communicated to the tax payer
   (a) 30 Days
   (b) 60 Days
   (c) 90 Days
   (d) 120 Days

   Answer: d
3. Where total income assessed by the Assessing Officer was Rs. 4,50,000 and the assessee wishes to file an appeal to Income Tax Appellate Tribunal against the order of Commissioner (Appeals). The fee for filing such appeal shall be:
   a) Rs. 1,500
   b) Rs. 2,500
   c) Rs. 4,500
   d) Rs. 10,000

   Answer: c

Practical Questions

1. An Assessee, who is aggrieved by an order passed u/s 263 by the Commissioner of Income Tax, is desirious to know the remedial course and the time limit against the order under the Income Tax Act, 1961.
2. Examine the circumstances where the appellant shall be entitled to produce additional evidence 'oral or documentary' before the 'Commissioner of Income Tax Appeal' other than the evidence produced during the proceedings before the assessing officer.
3. What is the time-limit for passing an rectification order by ITAT u/s 254.
4. Can an assessee make an additional/new claim before an appellate authority which was not claimed by the assessee in the return of income (though he was legally entitled to) otherwise than by filing a revised return of Income.

5. What do you understand by the term 'Appeal'? Explain in brief the stages of appeal under Income Tax?
6. What are the appealable order against which an appeal can be made before Joint Commissioner Appeal u/s 246?
7. What are the appealable order against which an appeal can be made before Commissioner Appeal u/s 246A?
8. What is Faceless Appeal? Explain in brief the procedure of conduct of faceless appeal.
9. What is revision of order u/s 263 and 264 of the Income Tax Act, 1961. Also explain the situation where revision cannot be made?

LIST OF FURTHER READINGS

- Direct Taxes Law and Practice

  Author : Dr. Vinod K. Singhania & Dr. Kapil Singhania

  Publisher : Taxmann
- Direct Taxes Ready Reckoner with Tax Planning

  Author : Dr. Girish Ahuja & Dr. Ravi Gupta Publisher : Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** *https://www.incometaxindiagov.in/Pages/acts/income-tax-act.aspx*
- **Income Tax Rules, 1962:** *https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962. aspx*
- **Circulars:** *https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx*
- **Notifications:** *https://www.incometaxindiagov.in/Pages/communications/notifications.aspx*