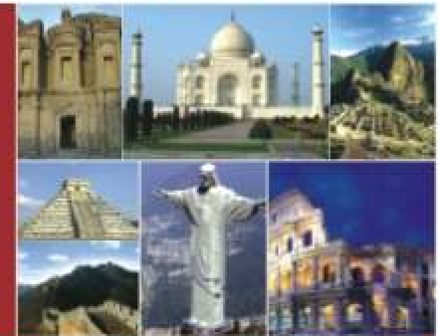



# APPEALS, REVISION, RECTIFICATION

## APPEALS

| Section | Appeal to | Filing Time Limit | Fee | Form No. | Documents | Remarks |
|---|---|---|---|---|---|---|
| 246A | CIT(A) | 1. 30 days from the date of receipt of notice of demand.<br>2. CIT(A) has power to condone delay u/s 249(3) on showing sufficient cause. | a. Court fee stamp of 50 paise on Form No. 35 and of 65 paise on copy of Assessment order.<br>b. Appeal fees:<br>1. Rs. 250.<br>a. Where assessed total income is Rs. 1 lakh or less.<br>b. Where appeals are filed on issues such as penalty | 35 | 1. Form No. 35 — in duplicate.<br>2. Order appealed against — 2 copies-certified.<br>3. Grounds of Appeal and Statement of Facts (in duplicate)<br>4. Notice of Demand (original)<br>5. In the case of appeal against penalty order — 2 copies of | 1. Person authorised to sign return of Income u/s. 140, must sign the appeal form.<br>2. Appealable orders are assessment. Orders, reassessment orders, penalty orders and other orders as listed under the relevant section. Appeal does not lie against the order which is not covered by 246A. |

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| | | | order, TDS defaults, non-filing of returns, etc. which cannot be linked with the assessed income.<br>2. Rs. 500, where assessed total income is more than Rs. 1 lakh but not more than Rs. 2 lakhs.<br>3. Rs. 1,000, where assessed total income is more than Rs. 2 lakh. | | relevant assessment order.<br>7. Proof of payment of appeal filing fee. | 6. Appeal does not lie u/s 246A, if the additions/ disallowances on facts are admitted by the assessee before the AO, as the assessee cannot be said to be 'aggrieved' by the assessment order containing such agreed additions/ disallowances. However, the wrong admission by assessee on statutory provisions, law points are not binding.<br>7. The assessee must ensure payment of tax due as per income 'returned' by him u/s 249(4) if not paid at the time of filing of return of income.<br>8. No power of CIT(A) to set aside the Ass. Order/penalty order of AO. |
| 248 | CIT(A) | 30 days from the payment of tax | Filing Fee Rs. 250/- | Form 35 | Same as above to the extent applicable. | 1. Any person having borne TDS u/s 195 and paid the same may apply to the CIT(A) to be declared not liable to make such deduction. |

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| | | | | | | 3. CIT(A) in appeal u/s 248 holding assessee not liable to deduct tax at source u/s 195, assessee is entitled to refund of the amount deposited by way of TDS. [*TELCO vs. DCIT* (2004) 83 TTJ 458 (Mum.)] |
| 253 | ITAT | 60 days from the date of service of CIT(A) order<br><br>S. 253(5) empowers the ITAT to condone the delay on showing sufficient grounds. | Appeal fees:<br><br>a. Rs. 500.<br>1. where assessed total income is Rs. 1 lakh or less.<br>2. Where appeals are filled on issues such as TDS defaults, penalties, non-filing of returns, etc. which cannot be linked with the assessed income.<br>3. An application for stay of demand.<br><br>b. Rs. 1,500, if assessed income is above Rs. 1 | 36 | 1. Form No. 36 in triplicate<br>2. Order appealed against — 2 copies (including one certified copy)<br>3. Order of AO — 2 copies.<br>4. Grounds of Appeal before CIT(A) — 2 copies.<br>5. Statement of facts filed before CIT(A) — 2 copies.<br>6. In the case of appeal against penalty order — 2 copies of relevant Ass. order.<br>7. In the case of appeal against order u/s. 143(3) read | 1. Person authorised to sign return of income u/s. 140, must sign appeal form.<br>2. Orders of CIT(A)/CIT as listed under the relevant section are appealable.<br>3. If the assessed income is a loss then fees has to be calculated as if that loss is income. |

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| | | | lakh but not more than Rs. 2 lakh.<br>d. 1% of assessed income subject to maximum of Rs. 10,000/- where assessed income is more than Rs. 2 lakhs. | | with S. 144A — 2 copies of the directions of the Deputy Commissioner u/s. 144A<br>10. In the case of appeal against order u/s. 143 read with S. 147 — 2 copies of original assessment order, if any.<br>11. Proof of payment of appeal filing fee. | |
| 253(4) | ITAT (Cross objection) | 30 days of receipt of notice of appeal by other party | NIL | 36A | Same as above (except instead of Form 36, Form 36A) | The Assessee/A.O. (who may or may not have filed appeal) may file the cross objections against any part of CIT(A) order. No fees payable. |

## REVISION

| Section | Subject of revision | Who can revise | Time limit | Remarks |
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| 263 | Any order passed by the Assessing Officer which is erroneous and prejudicial to the interest of the revenue | CIT | 2 years from the end of the financial year in which order sought to be revised was passed except in situation enumerated u/s 263(3). | 1. CIT must disclose reasons/ grounds in his notice to assessee for proposed revision. He shall give reasonable opportunity of being heard to Assessee before an order u/s 263 passed.<br>2. CIT has the power to call for and examine the record of any proceeding under the Act.<br>3. The Assessment. order must be 'erroneous' as well as 'prejudicial to |

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| | | | | the interest of revenue' before the action can be taken under this section.<br>6. The CIT has jurisdiction and power to initiate proceedings under S. 263 in respect of issues not considered by the CIT(A) in the appellate order.<br>7. An appeal against the order of CIT u/s 263 lies to ITAT u/s 253. |
| 264 | Any order passed by the officer subordinate to CIT<br>Exception:<br>1. Applies to an order other than an order to which S. 263 applies.<br>2. Where appeal lies before CIT (A)/ITAT or the time limit for filling the appeal has not expired. | CIT | a. If CIT revises on his own motion – 1 year<br>b. If assessee makes an application – 1 year from date of communication/ knowledge of the order (CIT has power to condone delay), order to be passed within one year from the end of the F.Y in which application is made. | 1. The provision can be beneficially used by the Assessee for seeking appropriate relief from CIT where certain claims, relief could not be claimed before the AO or appeal could not be filed before CIT(A) in time for any reason.<br>2. Application by the Assessee to be accompanied by a fee of Rs. 500.<br>3. An order cannot be said to have been made subject to an (effective) appeal if the appeal has been disposed of by CIT(A) or ITAT without passing an order on merits.<br>4. S. 264 is enacted for the benefit of the Assessee. Order u/s 264 cannot be prejudicial to Assessee.<br>5. The order of CIT u/s 264 is not appealable before ITAT u/s 253 or High Court u/s 260A. However, a petition for Writ of Certiorari under Article 226 of the Constitution for quashing the order of CIT will lie in appropriate cases. |

## RECTIFICATION

| Section | Subject matter of | Who can rectify | Time limit | What can be | Remarks |
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| | **rectification** | | | **rectified** | |
| 154 | a. Any order passed by an IT authority under the provisions of IT Act.<br>b. intimation or deemed intimation u/s. 143(1) | The IT authority passing the original order | 4 years from the end of the financial year in which order was passed. | Any mistake 'apparent' from the record. | 1. Debatable/controversial issues cannot be rectified u/s 154.<br>2. An appeal lies against rectification orders.<br>3. An appeal lies against refusal to rectify the mistake.<br>4. Rectification order having effect of enhancing liability or reducing refund could be passed only after opportunity of hearing to the assessee.<br>5. Rectification Application shall be disposed of within six months from the end of the month in which the application is made. |
| 254(2) | Any order passed by ITAT | ITAT | 4 years from the date of the order. | -do- | 1. Filing Fee – Rs. 50 / -<br>2. Meaning of word 'apparent' highly controversial in the wake of divergent judicial pronouncements.<br>3. Failure to consider material on record or order of ITAT based on erroneous assumption of facts, non consideration of grounds, failure to consider alternate grounds, non |

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| | | | | | consideration of relevant provisions of law/ rule/ binding decisions *inter alia* are some of the grounds for rectification.<br>4. The ITAT cannot 'review' its order passed on merits in the garb of 'rectification' by resorting to S. 254(2). |

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