APPEAL BEFORE THE CIT(A)

BACKDROP

- Sections covered – 246A, 248 to 251.
- Rules 45, 46 and 46A
- After an assessment – an assessee has two options either to file an appeal before CIT(A) or revision petition to CIT u/s. 264
- No right of appeal to Revenue or Department
- No inherent right of appeal. Right is given to assessee.

APPEALABLE ORDERS BEFORE CIT(A) –S.246A.

- Any assessee aggrieved by an order
- Aggrieved – Not agreed upon - Dissatisfied
- 24 clauses - mentioning different sections for filing an appeal
- Covers if any one denies his liability to be assessed e.g. below taxable limit, income not taxable u/s. 10 or deduction under chapter VIA.
- Partial denial is also covered.

CONTINUE

- Denies his liability to be assessed – can be claimed for the first time before CIT(A). Denial can be claimed at any stage.
  a) CIT Vs. M. Pyngrope [200 ITR 106 (Gauh)]
  b) CIT Vs. Orissa Cement Ltd. [215 ITR 409 (Del)]

- Even if the amount is included by the assessee in ROI – he can claim before CIT(A) that the said amount is not taxable or chargeable
  i) Pt Sheo Nath Prasad Sharma Vs. CIT [66 ITR 647(All)
  ii) Champa Properties (P) Ltd. Vs. CIT [166 ITR 367(Cal)]

CONTINUE

- Levy of interest u/s. 234B/234C is appealable on the ground that assessee denies his liability to be assessed.
  i) Jalgaon Dist. Central Co-op Bank Ltd. Vs. ITO [70 ITD 290 (Pune)]

- The assessee objects to making of adjustments or any order u/s. 143(3) or u/s. 144 or the amount of tax determined or the loss computed or to the <u>status</u> under which he is assessed; except an order passed in pursuance of direction of Dispute Resolution Panel (DRP) w.e.f. 01.10.2009 i.e. u/s. 144C.

CONTINUE

- On failure of revision petition u/s. 264 – An assessee can file appeal an appeal u/s. 246A after explaining delay in filing the appeal.

  a) CIT Vs. D. Lakhminnarayana Pathi [250 ITR 187 (Mad)]

APPEAL BY A PERSON DENYING LIABILITY TO DEDUCT TAX (S. 248)

- Any person who has deducted and paid tax in respect of any sum chargeable under the Act u/s. 195, other than interest, who denies his liability to make such deduction may appeal to CIT(A). This section comes into play where resident assessee bears the tax on amount of payment to a non-resident.

FORM OF APPEAL AND LIMITATION (S. 249)

- As per Rule 45, an appeal to CIT(A) shall be in Form No. 35.
- Form no. 35 requires (i) Grounds of appeal and (ii) Statement of facts
- Memorandum of appeal (F.35), Statement of facts and grounds of appeal should be submitted in duplicate to CIT(A) alongwith copy of the order appealed with notice of demand in <u>original</u>
- Non enclosure of notice of demand – technical irregularities but not fatal

  [Chelamala Setti Adeyya Vs. CIT - 54 ITR 339(AP)]

CONTINUE

- The form of verification shall be signed by a person in accordance with the provisions of Rule 45(2) i. e. by the person who is authorized to sign the ROI u/s. 140 of the Act, as applicable to the assessee.

FEES

• Total income computed by AO	Amount (Rs.)
i) upto Rs. 1,00,000/-	250/-
ii) Bet. Rs. 1,00,000/- and Rs. 2,00,000/-	500/-
iii) Above Rs. 2,00,000/-	1000/-
• Not covered above	250/-

- Total income determined at negative figure- Minimum fees [Gilbs Computer Ltd. Vs. ITAT - 317 ITR 159(Bom)]

TIMES LIMIT FOR PRESENTATION OF APPEAL

- Appeal should be presented within 30 days from:

  a) Appeal u/s. 248 – the date of payment of tax

  b) Appeal relates to assessment or penalty – date of services of notice of demand

  c) In any other case – the date on which intimation of the order is served

- U/s. 249(3), the CIT(A) has power to admit belated appeal, if sufficient cause for not presenting the same in time is shown.

APPEAL SHALL NOT BE ADMITTED UNLESS

a) As per ROI, tax is paid

b) Where no ROI is filed, paid an amount equal to the amount of AT payable.

The CIT(A) may for any good and sufficient reason recorded in writing exempt from payment of AT

- Even payment of tax as per ROI before filing the appeal or hearing of the appeal will not mar the appeal
  [S. Alagarswamy Vs. ITO - 296 ITR 43 (Mad)]
  [CIT Vs. Smt. G.A.Samanthakamani - 259 ITR 245 (Mad)]

- Tax does not include interest
  CIT Vs. Manojkumar Beriwal - 217 CTR 407 (Bom).

PROCEDURE IN APPEAL (S. 250)

- Notice to AO and Assessee fixing a day and place of hearing
- Following shall have right to be heard:
  a) the appellant in person or through his AR
  b) the AO or his AR.
- CIT(A) has power to adjourn the hearing.
- Before disposing of the appeal, the CIT(A) has power to make further inquiry or may direct the AO to further inquire and report i.e. remand report.

CONTINUE

- The CIT(A) may allow to raise <u>additional ground</u> is he is satisfied that the omission of the ground was not wilful or unreasonable.

- The order of the CIT(A) should be in writing and shall state the point for determination, the decision thereon and the reason for the decision.

- The CIT(A) may, as far as possible, may hear and decide the appeal within a period of one year from the end of the financial year in which appeal is filed.

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- As per CBDT Instruction no. 1089 dt. 20.08.1977 and Instruction no. 1411 dated 15.09.1981, the CIT(A) should pass appellate order (i) within 10 days after the final hearing and (ii) in all duly heard cases before relinquishing charge on transfer/proceedings on leave

- The CIT(A) on disposal ; communicate a copy of order to AO and the assessee.

POWER OF CIT (A) (s. 251)

- Power of the CIT(A) are:

a) He may confirm, reduce, enhance or annul the assessment

b) If proceedings before the Settlement Commission u/s. 245HA has been abated, he may use the material and information produced before it.

c) In an appeal against an order imposing a penalty ; to confirm cancel or vary either to reduce or enhance the penalty.

d) In any other case, he may pass such orders in the appeal as he thinks fit.

CONTINUE

- However, he cannot enhance an assessment or a penalty or reduce the amount of refund unless a reasonable opportunity is given to an assessee.

- The Explanation provides that CIT(A) may consider and decide any matter arising out of the proceedings, notwithstanding that such matter was not raised before the CIT(A).

CONTINUE

- Thus CIT(A) powers are very wide. The scope of his powers is conterminous with that of AO. He can do what AO can do and can also direct him to do what he has failed to do.

  [CIT Vs. Kanpur Coal Syndicate 53 ITR 225(SC)]

- However he has no jurisdiction to assess a source of income which is not disclosed either in the ROI or in the assessment order. Thus it is not open to him to travel outside the record for finding out new source of income.

  [CIT Vs. Rai Bahadur Hardutroy Motilal Chamaria – 66 ITR 443(SC)]

- In CIT Vs. Nirbheram Daluram [224 ITR 610] the Supreme Court held that the CIT(A) can make addition in respect of new source of income if it is not considered by AO.

CONTINUE

- An assessee has no power to withdraw the appeal filed before the CIT(A) as per 66 ITR 443(SC) (supra) but the CIT(A) or Appellate Authority is satisfied that there will be no prejudice to revenue may allow to withdraw.
  [Bhartia Steel & Engineering Co. P. Ltd. Vs. ITO 97 ITR 154(Cal)]

- New claim before the CIT(A) or ITAT can be made if all facts are available on record, otherwise no.
  [CIT Vs. Gujargnavures P. Ltd. [111 ITR 1(SC)]

- No power to review except power of rectification u/s. 154.

- No power to consider validity of Act or Rules
  [CIT Vs. Straw Products Ltd. 60 ITR 156 (SC)]

CONTINUE

- Inherent power to stay the recovery

  [ITO Vs. Mohammed Kunhi - 71 ITR 815 (SC)]

  [Paulsons Litho Works Vs. ITO -208 ITR 676 (Mad)]

- "Any matter arising out of the proceedings"

  It extends to all matters arising out of the proceedings which might have been considered and determined by the AO in the course of the assessment although such matters might not have been raised by the assessee. The competence of the appellate authority ranges over the whole assessment proceedings without restrictions on him. His jurisdiction is therefore, not confirmed to the subject matter of the appeal but extends to the subject matter of assessment.

  [Ugar Sagar Works Ltd. Vs./ CIT -141 ITR 326 (Bom)]

ADDITIONAL EVIDENCE RULE 46A

- The Rule provides that the appellant shall not be entitled to produce before CIT(A) any evidence oral or documentary, other than evidence produced before him during the course of proceedings before AO except in the following circumstances viz:

  a) AO has refused to admit evidence which ought to have been admitted, or

  b) The appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO, or

  c) The appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal or

CONTINUE

d) The AO has made the order without giving sufficient opportunity.

- No evidence shall be admitted unless CIT(A) records in writing the reason for its admission.

- The CIT(A) shall not take into account any evidence unless the AO has been allowed a reasonable opportunity to examine the evidence or for rebuttal of the additional evidence.

- Notwithstanding above, the CIT(A) has a power to direct the production of any document or the examination of any witness.

CONTINUE

- This Rule does not specifically exclude principles of natural justice and therefore these principles are necessarily to be read into provisions of Rules

  [CIT Vs. United Towers (I) (P) Ltd. -296 ITR 106 (Del)]

- In CIT Vs. Poddar Swadeshi Udyog P. Ltd. [295 ITR 252 (Gauh)] has held that the Tribunal observed that the books of account were produced before the AO and the new details filed before the CIT (A) were in continuation of the original evidence, so it was not necessary to give an opportunity to AO.

ANY QUESTIONS ?

THANK YOU.