APPEALS TO COMMISSIONER (SECTION 246A TO 249)

Appealable orders under section 246A:

(1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) ***may appeal to the Commissioner (Appeals)*** against—

(*a*) an order passed by a Joint Commissioner under clause (*ii*) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the 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;

(*aa*) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(*ab*) an order of assessment or reassessment under section 115WG;

(*b*) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 150;

(*ba*) an order of assessment or reassessment under section 153A except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA;

(*bb*) an order [5][made] under sub-section (3) of section 92CD;

(*c*) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections except an order referred to in sub-section (12) of section 144BA;

(*d*) an order made under section 163 treating the assessee as the agent of a non-resident;

(*e*) an order made under sub-section (2) or sub-section (3) of section 170;

(*f*) an order made under section 171;

(*g*) an order made under clause (*b*) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;

(*h*) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;

(*ha*) an order made under section 201;

(*hb*) an order made under sub-section (6A) of section 206C;

(*i*) an order made under section 237;

(*j*) an order imposing a penalty under—

(*A*) section 221; or

(*B*) section 271, section 271A, section 271AAA, section 271AAB, section 271F, section 271FB, section 272AA or section 272BB;

(*C*) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

(*ja*) an order of imposing or enhancing penalty under sub-section (1A) of section 275;

(*k*) an order of assessment made 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 on or after the 1st day of January, 1997;

(*l*) an order imposing a penalty under sub-section (2) of section 158BFA;

(*m*) an order imposing a penalty under section 271B or section 271BB;

(*n*) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E;

(*o*) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(*p*) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(*q*) an order imposing a penalty under Chapter XXI;

(*r*) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 shall be deemed to have been filed under this section.

(1B) Every appeal filed by an assessee in default against an order under sub-section (6A) of section 206C on or after the 1st day of April, 2007 but before the 1st day of June, 2007 shall be deemed to have been filed under this section.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day :

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

OTHER NOTABLE POINTS

1.Time limit for presenting appeal	Appeals should be presented ***within 30 days*** of the following date : • where the appeal relates to any tax deducted under section 195(1), the date of payment of the tax • where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty • in any other case, the date on which intimation of the order sought to be appealed against is served. • The Commissioner (Appeals) may admit belated application on sufficient cause being shown.
2.Form of appeal	Form No.35 • The CBDT had substituted the Rule 45 of Income-tax Rules, 1962 relating to filing of Form of appeal to CIT (A) vide

<table>
<tr><td></td><td>Income-tax (3rd Amendment) Rules, 2016.
By virtue of such amendment, the CBDT had issued a new Form No. 35 for filing an appeal before CIT(A). Further, e-filing of Form has been made mandatory for persons for whom e-filing of return of income is mandatory.</td></tr>
<tr><td>3.Signing of Form</td><td>The form of appeal, the grounds of appeal and the form of verification are to <u>be signed and verified by the person authorized to sign the return of income under section 140</u> as applicable to the assessee.</td></tr>
<tr><td>4.Fee</td><td>In case of appeals to Commissioner (Appeals) (irrespective of date of initiation of assessment proceedings) the following fee is payable :<table><tr><th>Assessed Income</th><th>Fee payable (Rs.)</th></tr><tr><td>Up to or Less than Rs.1,00,000</td><td>250</td></tr><tr><td>More than Rs. 1,00,000 but not more than Rs. 2,00,000</td><td>500</td></tr><tr><td>More than Rs. 2,00,000</td><td>1,000</td></tr></table>Where subject-matter of appeal is not covered under any of the above - Rs. 250.</td></tr>
<tr><td>5.Court fee stamp</td><td>Court fee stamp of 50 paise is to be affixed on the first copy of Form 35.</td></tr>
<tr><td>6.Documents to be submitted</td><td>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.</td></tr>
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	• One copy of order appealed against • Notice of demand in original • Copy of challan 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.
7.Disposal of appeal	• ***Within a period of one year (1 year) from end of financial year in which appeal is filed*** (where it is possible). The order should be issued within 15 days of last hearing (*Instruction No. 20/2003, dated 23-12-2003*)

What is the procedure for CIT Appeal?

- ✓ After the receipt of Form no. 35, the Commissioner of Income-tax (Appeals) will fix the date and place for hearing the appeal.
- ✓ The date and place will be communicated to the taxpayer and to the Assessing Officer against whose order appeal is preferred. The communication will be made by issuing a notice to both the parties.
- ✓ In the appeal proceedings the taxpayer or the Assessing Officer can either appear personally or can appear through an authorized representative.
- ✓ The Commissioner of Income-tax (Appeals) would hear the appeal and may adjourn the appeal from time-to-time.
- ✓ Before passing the order, the Commissioner of Income-tax (Appeal) may make such further inquiries as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result to him.

- ✓ During the course of appeal, the Commissioner of Income-tax (Appeals) may allow the taxpayer to go into additional grounds of appeal (#). However, additional grounds will be accepted only if the Commissioner of Income-tax (Appeals) is satisfied that omission of these grounds from the form of appeal was not willful or unreasonable.

  (#) Additional grounds means *grounds which are not specified in Form no. 35*

How to file additional evidences?

During the appeal proceedings before the Commissioner of Income-tax (Appeals), the taxpayer is permitted to produce only those evidences (whether oral or documentary) which were produced by him before the Assessing Officer. In other words, the Commissioner of Income-tax (Appeals) will not permit the taxpayer to produce any additional evidences which were not produced by him before the Assessing Officer. However, in following circumstances additional evidence will be accepted by the Commissioner of Income-tax (Appeals)

(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 be produced by the Assessing Officer; or

(c) Where the appellant was prevented by sufficient cause from producing any evidence before the Assessing Officer 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.

- ✓ Normally, the taxpayer has to make an application for acceptance of additional evidences. In other words, the additional evidences are to be accompanied with an application stating the reasons for their admission.
- ✓ On receipt of such an application, the Commissioner of Income-tax (Appeals) may admit the same after recording reasons in writing for the admission of these evidences.
- ✓ Before taking into account the additional evidence filed by the taxpayer, the Commissioner of Income-tax (Appeals) has to provide a reasonable opportunity to the Assessing Officer for examining the additional evidence or the witness, as well as to produce evidences to rebut additional evidences produced by the taxpayer.

Decision of the Commissioner of Income-tax (Appeals)

- ✓ After hearing the case/arguments, the Commissioner of Income-tax (Appeals) will pass his order. The order will be in writing. The order will be passed for disposal of the appeal and will state the decision on each ground of appeal along with reasons.
- ✓ In case of an appeal against the assessment order the Commissioner of Income-tax (Appeals) may confirm, reduce, enhance or annul the assessment (including assessment in respect of which proceedings before the Settlement Commission abates).
- ✓ In case of an appeal against the penalty order the Commissioner of Income-tax (Appeals) may confirm, reduce or enhance the penalty.
- ✓ Before enhancing any assessment or penalty, the Commissioner of Income-tax (Appeals) has to provide a reasonable opportunity to the taxpayer to present his case against such enhancement.

- ✓ While disposing of an appeal, the Commissioner of Income-tax (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 taxpayer before the Commissioner of Income-tax (Appeals).

How the appeals before Commissioner of Income Tax disposed?

Where it is possible, the Commissioner of Income-tax (Appeal) shall dispose off the appeal within a period of one year from the end of the financial year in which appeal is filed. The order should be issued within 15 days of last hearing.

No more interaction between Appellant and CIT (A)

Faceless Appeal

The Finance Act, 2020 authorize the Central Government to notify an e-appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability by:

- ✓ Eliminating the interface between the CIT(A) and the appellant in the course of appellate proceedings to the extent feasible technologically;
- ✓ Optimising the utilization of the resources through economies of scale and functional specialization;
- ✓ Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT (Appeals).
- ✓ Necessary directions to this regard may be made by the Central Government by 31-03-2022. The directions may specify that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations.