

Rectification, Revision and Appeals (including typical litigation issues)

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Scope of Presentation

- Rectification
- Revisions
- Reassessments
- Dispute Resolution Panel (DRP)
- First Appeal CIT(A)
- First Appeal ITAT
- Second Appeal ITAT
- Appeal to High Court (Brief discussion)
- Appeal to Supreme Court (Brief discussion)

Scope of Presentation – Does not include

- Writ to High Court and Supreme Court (Not considered in the Presentation)
- Settlement Commission
- Authority of Advance Ruling
- Other Dispute Resolution Forum like that for GAAR

Rectifications

- Rectification – CPC Orders
- Rectification – S. 154
- Rectification – S. 155
- Other Rectifications (not specifically provided)

Revision – Effect of appeal orders

- All the orders need to be revised giving effect to the Appeal Orders

Revisions

- Revision u/s 263
- Revision u/s 264
- Withdrawal of Registration u/s 12AA
- Withdrawal of Approval u/s 10(23C) etc.

Reassessments

- Reassessment u/s 147
- Reassessment/ assessment u/s 153A/ 153C
- Reassessment in consequence of the revision by CIT
- Reassessment in consequence of the ITAT order or of the higher forum.

First Appeal-CIT(A)

A) Appeal against Income determination Orders

- Assessment Orders
- Penalty Orders
- Rectification Orders
- Regular Assessment u/s 143(3)
- Best Judgment Assessment u/s 144
- Assessment Orders U/s 153A/153C
- Orders giving effect to appeal orders passed by AO
- Orders giving effect to CIT Orders u/s 263/264/12A/10(23C) etc.

First Appeal CIT(A) – Other Orders

Contd..

- B) TDS/TCS Assessment u/s 201 / 206C
- C) No Liability to deduct TDS u/s 195 (refer S. 248)
- D) Penalty orders under various sections
- E) Other Orders where appeal lies with CIT(A)
 - Order u/s 163 treating a person as ‘Agent’
 - Order u/s 170 Assessing the income in the hand of Successor
 - Order u/s 171 – Order relating to finding of partition of HUF
 - Order u/s 237 – Refund Claim ???

Appeal Before ITAT

A) All orders by CIT(A)- Second Appeal

B) Other Orders – First Appeal directly to ITAT

- CIT Order u/s 263
- CIT Order u/s 12A /u/s 12AA (Refusal/withdrawal)
- CIT Order u/s 80G (Refusal)
- CIT Order u/s 10(23C) etc.
- All appeal effect orders passed by CIT and above
- Assessment Order pursuant to DRP Direction

Appeal - High Court

- As per S. 260A, an appeals shall lie to the High Court from every order passed by the ITAT where high court is satisfied that the **case involves a substantial question of law.**
- **The appeal should be filed within 120 days of receipt of order (condonation possible)**
- Issues of pure facts may not be considered by High Court. However mixed question of Law and Fact may be considered by High Court.

Appeal - High Court

- Recently, Karnataka HC in case of Softbrands India P Ltd [TS-475-HC-2018(KAR)-TP] held that the issue of comparables selection, application of filters, etc. cannot give rise to a substantial question of law to maintain an appeal before HC unless some ex-facie perversity is demonstrated in the Tribunal order. Following Softbrands ruling, Karnataka HC has dismissed 68 TP-appeals.
- There would be a primary hearing for admission of appeal
- High Court may, at the time of admission hearing, refuse to admit or may modify/reframe the question of law
- Final hearing, after admission, may take long time.

Appeal - Supreme Court

- All orders of High Court passed in pursuance of the appeal against ITAT Order u/s 254 where High Court certifies to be a fit one for appeal to the Supreme Court
- Appeal may be filed by way of Special Leave

THRESHOLD FOR APPEAL BY REVENUE –Circular 3 Of 2018

- Department will not file (and withdraw already filed) an appeal of cross objection filed if the tax effect is not exceeding the following (Tax includes surcharge but not interest)
- Each year to be considered separately

Appeal to	Tax effect (Rs.)
ITAT	20 LAKHS
HIGH COURT	50 LAKHS
SUPREME COURT	100 LAKHS



Basic principles to be kept in mind

Basic principles to be kept in mind

- Fate of appeals is normally decided at assessment stage
- Good presentation adds respect of yours and wins difficult claims
- Bad representation not only results in addition/disallowance but also insults from client as well as IT authorities
- Good representation is necessary to avoid avoidable penalties and Prosecution of the assessee
- Non submission of vital details may lead to Reassessments.

Basic principles to be kept in mind

- Appeal before CIT(A) can not be admitted unless at the time of filing of an appeal - [S. 249(4)]
 1. If return is filed, then the tax on returned income is paid
 2. In case no return is filed, then Assessee must pay an advance tax which was payable by him

New evidence at Appeal Level???

- No new evidence can easily be filed
- Rule 46A–Restriction on new evidence before CIT(A)
- Rule 29 of ITAT Rules–Similar restrictions on new evidence
- However, DRP proceedings are extension of assessment proceedings and fresh evidences can be submitted.
- Penalty proceedings are independent proceedings and therefore, fresh evidence can be submitted (this is for the primary proceeding and not for appeal against penalty order – in appeal proceedings, Rule 46A would apply).

Enhancements

- S. 251 allows CIT (A) to enhance the assessment and or reduce refund. Section provides for opportunity to be given to the assessee before doing so.
- DRP is empowered to enhance TP Adjustment u/s 144C(8) **Hamon Shriram Cottrell Pvt. Ltd. Vs ITO (ITAT Mumbai)**

Enhancements

While the CIT(A) has the power to "enhance the assessment", he has no power to travel beyond the subject-matter of the assessment and is not entitled to assess new sources of income.

Principle of natural justice- judicial precedent which can help assessee

Tin Box Co. v. CIT (2001) 249 ITR 216 (SC) "an assessment made without giving the assessee an opportunity of setting out his case was liable to be set aside"

Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC), if the AO proposes to use any material against the assessee, which is obtained by private enquiry, it should have been communicated to the assessee so as to know full particulars of the case and the failure to do so vitiates the case of the Revenue.

Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (SC)

The Assessee must be given an opportunity to cross examine the witness if requested by assessee.

Direct judicial precedents

- CIT .v. Nangalia Fabrics P. Ltd. (2014) 220 Taxman 17 (Mag.)(Guj)(HC.)
- CIT .v. Bholanath Poly Fab (P.) Ltd. (2013) 355 ITR 290 /40 Taxmann.com 494 /(2014) 220 Taxman 82 (Mag.) (Guj.)(HC)
- Ensemble Infrastructure Mumbai Vs DCIT Circle 1(2),- ITA No. 1760/PN/2012 & 1114/PN/2013 decided on 26-06-2015

Rectifications – CPC Orders (Circular No. 1 of 2018)

Where upon receiving intimation u/s 143(1)(a)(vi) of the Act, if the taxpayer

1. Fully agrees - then **file a revised return** in response
2. Partially agrees – then **file a revised return and reconciliation statement** (in the format to be provided by CPC-ITR on the e-filing site)
3. Disagrees – then **file reconciliation statement** (in the format to be provided by CPC-ITR on the e-filing site)

Rectifications – S. 154

- Apparent mistakes in Order passed by **any Income Tax Authorities** can be rectified under this section
- The authority, which passes the order , only can rectify such error
- Time limit - 4 years from the financial year in which the order was passed
- In case of application by assessee
 - The application must be within 4 years from the end of financial year in which the order was passed
 - the application must be disposed off within 6 months.

Rectifications – S. 154 Contd..

- If the revision by IT authorities to result in adverse effect on the assessee, no rectification can be carried out without giving opportunity to the assessee
- Supreme Court decision on issues can be regarded as mistake apparent on record and S. 154 can be used if the time limit for revision has not expired.
- However, Supreme Court decisions delivered after issue of notice for rectification can not be considered to be mistake apparent from records.

Rectifications – S. 154 Contd..

- **Volkart Bros: 82 ITR 50 (SC)** -A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions
- **Hero Cycles: 228 ITR 463 (SC)**- Mistake should be apparent on record and no debatable issue is involved –
- **RD Shah:207 ITR 271(AP)**: Mistake discovered as a result of subsequent inquiry is not mistake apparent
- **Indra Singh: 64 ITR 501 (Cal)**: earlier year records are relevant for deciding mistake apparent from record – so is held by Supreme Court in **Maharana Mills 36 ITR 350**

Rectifications – S. 155 Other Amendments (important and effective only)

- The section gives power to give Consequential Effects to other orders or assessments
- Effect of changes in the assessment of partners upon firm assessment as regard allowable Remuneration to partner
- Effect of Changes in the assessment of members upon assessment of AOP, BOI etc.
- Effect of changes in depreciation and WDV on reassessments. Similarly, as regard carryforward and set off of losses.

Rectifications – S. 155 Other Amendments (important and effective only) Contd..

- Capital Gain exemption granted u/s 47 for transaction of Capital Asset between wholly owned subsidiary and parent company gets withdrawn on violation as stated in S. 47A (conversion of Capital Asset in Stock in Trade and/or subsidiary does not remain wholly owned). The effect is required to be given in the original year of transfer.
- Allowing the deduction u/s 10A/10B/10BA on the basis of receipt of convertible foreign exchange
- Allowing FTC, which was disallowed earlier on the ground that the assessee was in dispute in Foreign country for such tax (on settlement of dispute).

Rectifications – S. 155 Other Amendments (important and effective only) Contd..

- Allowing the reduction in full value of consideration (for S. 50C upon stamp duty value reduced by the stamp authority in any appeal before them). **Similar provision not found for S. 43CA**
- **The events referred in S. 155, the limitation period of 4 years is to be reckoned from the point of the event on which account the rectification is required.**

Other Rectifications (not specifically provided)

- Impact of S. 43B
- Impact of Revenue Vs Capital in earlier year
- Impact of reduction of depreciation in the earlier assessment
- Impact of valuation of inventory in earlier assessment
 - Closing stock of earlier year has to be treated as opening stock of current year —AO making an addition to the value of closing stock/work-in progress in the earlier year—Rectification ought to have been carried out u/s 154. -- **V.K.J. Builders & Contractors (P) Ltd. Vs. Commissioner Of Income Tax 318 ITR 204.**

Other Rectifications (not specifically provided) Contd..

- Impact of other disallowances in earlier year which may be claimable in subsequent year
- Impact of changes due to percentage completion method
- The decision of **Goetz India 284 ITR 0323** needs to be kept in mind
- It is advisable to put on record the supplementary claim in subsequent year (without prejudice, if intend to appeal against) during the assessment proceedings of original year.



S. 263 -UPWARD REVISION BY CIT

Upward Revision – S. 263

- Order should be erroneous AND
- Order should be prejudicial to the interest of revenue

Both the conditions are cumulative. Recourse to Section 263(1) cannot be taken if the impugned order is erroneous but not prejudicial to the interest of the revenue; or if it is prejudicial to the interest of the revenue but not erroneous.

- Malabar Industrial Co. Ltd. 243 ITR 83 (SC),
- Vikash Polymers 194 Taxman 57 (Delhi) (HC)

Upward Revision – S. 263

Contd..

- Power Only for Orders by **Assessing Officer**
- “Order giving effect order” to the orders of CIT(A) or ITAT can also be covered u/s 263 - **Pentamedia Graphics Ltd – Chennai**
ITAT 52 SOT 0200
- Time Limit: 2 years from the end of the financial year in which the order (sought to be revised) was passed
- Procedure: Opportunity to be given to the assessee by the CIT before revising the order or directing reassessment.

S. 263- What is erroneous?

- Non application of mind to relevant material or an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of order being erroneous.
 - **Jawahar Bhattacharjee 341 ITR 434 (Gauhati) (HC) (FB)**

S. 263- What is prejudicial to the Interest of Revenue?

- The term “prejudice” contemplated under section 263 is prejudice to the income-tax administration as a whole. **Pratap Footwear 2003 SOT 638 (Jabalpur) (Trib.)**.
- In the case of **Bhagwan Das [2005] 272 ITR 367 (All.)(HC)**, the High Court held that non-application of mind by the Assessing Officer was prejudicial to the interest of the revenue.
- Every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. **Hero Briggs & Stratton Auto Ltd.61 Taxman 127 (Delhi) (Trib.)**

S. 263- Tax impact essential

- There has to be tax effect.
- In absence of any finding that there is loss of revenue, interference under section 263 is not justified.
 - **G. R. Thangamaligai 259 ITR 129 (Mad.) (HC)**
Where the tax effect because of an order passed by the Assessing Officer is NIL, such order is not open to revision.
 - **Punjab Wool Syndicate 17 ITR 439 (Chandigarh) (Trib.)**

S. 263- Power Not for Change of Opinion

- Two views are possible- Revision is not valid
- When the Assessing Officer takes one of the two views permissible in law and which the Commissioner does not agree with and which results in a loss of revenue, it cannot be treated as erroneous order prejudicial to the interest of revenue, unless the view taken by the Assessing Officer is completely unsustainable in law.
 - **CIT v. Max India Limited 295 ITR 282 (SC)**
 - **Malbar Industries Co Ltd 243 ITR 83 (SC)**

S. 263- Insertion of Explanation 2 vide finance act 2015 - Impact

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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."

263- Insertion of Explanation 2 vide finance act 2015 – Impact ----- cont'd

In the case of *Narayan Tatu Rane v. Income Tax Officer* [(2016) 70 taxmann.com 227], Hon. Mumbai ITAT held that the said Explanation cannot be said to have overridden the law as interpreted by the Hon'ble Delhi High Court, according to which the Commissioner has to conduct an enquiry and verification to establish and show that the assessment order is unsustainable in law. The Tribunal has further held that the intention of the legislature could not have been to enable the PCIT to find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings.

The above decision also followed by Hon. Delhi ITAT in case of *Amira Enterprises Ltd – ITA no. 452/Del/2017*

S. 263- New Claim by assessee?

- Assessee is not eligible to claim any new benefit in assessment proceedings pursuant to section 263.
- ITW India (P) Ltd. 40 SOT 348 (Hyd.) (Trib.)

S. 263- What can be revised by AO while giving effect to CIT's Order

The Assessing Officer was held entitled to consider only those grounds which were considered by the Commissioner and not any other items to make fresh assessment.

- **D. N. Dosani 280 ITR 275 (Guj.)(HC)**
- **Geometric Software Solutions Co. Ltd. 32 SOT 428 (Mum.) (Trib.)**



S. 264 – Downward Revision

Downward Revision- S. 264 Contd...

- Power in relation to Orders by Subordinate Authorities other than to which S. 263 applies
- Time limit:
 - 1 year from the date of order if CIT on his own revises the order
 - 1 year from the date of order or the date on which assessee came to know about the order (simply speaking – date of receipt of the assessment order)
- If assessee wants to apply for revision, he is required to pay Rs. 500/-

Downward Revision- S. 264 Contd...

- CIT can not revise an order if the issue (for which revision is proposed or applied) is pending before appellate authority
- CIT can not revise an order where the time is still available for appeal before appropriate authority and the assessee has not waived his right to appeal.
- Practically, CIT asks for the confirmation for no appeal or asks for withdrawal of appeal before he considers the application

Downward Revision- S. 264

Contd...

- Generally High Courts have held that Chapter VI-A Deductions (forgotten to be claimed or wrongly claimed) can be dealt with u/s 264.
 - Gujrat HC – Ramdev Export 251 ITR 873
 - Bombay HC - Shah Bros. 251 ITR 741
 - Allahabad HC – Subhash Chandra Sarvesh Kumar 312 ITR 619
 - Madras HC - M. Chettyappan 110 ITR 684 (for forgotten LIC Deduction claim)
- However AP HC in **M. S. Raju (298 ITR 373)** states that no new claim for the first time before CIT can be entertained u/s 264. (contrary view)

Downward Revision- S. 264

Contd...

- S. 264 remedy would be available only when the issue is not in appeal or when you promise to withdraw pending appeal on the issue.
- Even Order u/s 264 or refusal to pass Order u/s 264 **do not amount to Appealable Order u/s 253.** (Being CIT orders- no question of appeal before CIT (Appeal).
- Both together amounts to very dangerous proposition and should be very cautiously studied.
- Grave injustice probably can be taken to High Court by way of writ
- Try to go for alternative remedies unless reasonably confident about outcome or go for S. 264 remedy when no other remedies are available.

Withdrawal of Registration u/s 12AA and Rescinding Approval U/s 10(23C)

- U/s 12AA/10(23C) empowers CIT/ Pr. CIT to withdraw the registration granted if CIT/Pr. CIT is satisfied that the activities of such trust or institution
 - are not genuine or
 - are not being carried out in accordance with the objects.
- **Hardayal Charitable & Educational Trust 355 ITR 534 – ALL HC**
- **Majumdar Art Foundation –Kol ITAT–ITA no. 1688/17**
- **BABA Wealfare Educational Society – ITAT Delhi – ITA no. 2932/DEL/2015**

S. 147- Reassessment

Reassessment -S. 147

- When the Assessing Officer has reason to believe that income has escaped assessment, he has power to reassess the Income u/s 147.
- The A.O. should record the reason for his belief.
- These reason should be on the basis of information available on records at the time of he recording such reasons.
- An ITO can issue notice only with the approval of Jt. CIT.

Reassessments -S. 147

Contd..

- Time limit (for issue of notice)
 - Within 4 years from the end of the relevant assessment year.
 - However, the time can be extended if following conditions are met
 - The escapement is a reason of failure on the part of assessee to file return or to respond to a notice u/s 142(1) / 148 or to disclose fully and truly all material facts necessary for his assessment (Proviso 1 to S. 147) AND
 - Likely escapement of income is more than Rs. 1 Lakh [S. 149(1) (b)]
- The ITO has to take approval of Jt. CIT and if more than 4 years then approval of CIT or CCIT
- Asst. CIT and Dy. CIT have to take permission of Jt. CIT if notice is being issued after 4 years.

Time Limit for Issue of Notice u/s 148 Contd..

- If the assessment was completed u/s 143(3), the tax department cannot take any action (u/s 147) against the assessee after 4 years from the end of relevant AY unless:
- Unless the assessee has failed to disclose all the necessary material facts for the relevant AY (as per Bombay HC in **Titanor Components 343 ITR 0183**, the reason recorded should specifically mention that the assessee has failed to disclose necessary material facts) OR
- Income has escaped assessment due to non-filing of return u/s 139 or in response to a notice issued u/s 142(1) or u/s 148 OR
- Income has escaped assessment due to incorrect filing.

Time Limit for Issue of Notice u/s 148

Contd..

Condition	Time limit
Income Escaped is less than Rs. 1 lakh	4 years from the end of relevant AY
Income Escaped is more than Rs 1 lakh (Plus condition discussed in earlier slide)	6 years from the end of relevant AY
Escaped income relates to foreign asset	16 years from the end of relevant AY

S. 147/148 compliances

- As laid down in **GKN Driveshafts (I) Ltd. by S.C. (259 ITR 19)**, the following compliances :-
 - Upon receiving the notice, one should file the Return of Income once again.
 - Then ask for the reason and get the same.
 - A.O. is bound to furnish reasons.
 - Assessee can file objections against the reasons and issuance of notice
 - The A.O. must dispose off the objections by way of a speaking order.
- Many decisions are there treating the assessment u/s 147 to be void, if A.O. has failed to comply with the conditions regarding furnishing the reasons or objections not disposed by way of a speaking order. e.g. **CIT Vs. Safetag International India Pvt. Ltd. (Delhi HC) 332 ITR 622**

S. 147/148 compliances

Contd..

- If it is good case, object to the reasons of AO's belief of escapement of Income. This will help for litigation at later stage. (normal practice is not to agree with your objections and AO goes ahead with the reassessment). The AO must pass speaking order for rejecting the objection.
- The (Re)Assessment has to be completed within 12 months (31st March) following the financial year in which notice u/s 148 is served.
- First appeal will lie before CIT(A).

S. 147 - Some other legal issues

Contd..

- No reopening to make fishing inquiries
 - **Bhor Industries Ltd 267 ITR 161 (Bom)**
 - **Hindustan Lever Ltd 268 ITR 332 (Bom) and many more**

Jet Airways case 331 ITR 0236 (Bom) ???

- Bombay High Court has held that if there is no addition on the ground on which the case was reopened, the AO cannot make addition on other grounds without giving another notice u/s 147.
- Similar is the view of Delhi HC in the case of **Ranbaxy 336 ITR 0136**
- However, Delhi HC referred the matter to larger bench in the case of **Jakhotia Plastics Pvt. Ltd**

153A– Search Cases

- In case of Persons searched or persons from whom Books of Accounts, other documents or assets are requisitioned- 6 years assessments are reopened.
- Pending Assessment abate
- The assessments are to be completed within 21/18 months from the end of the financial year in which the search was carried

153C– Other Persons on account of Search Case of someone else

- If Officer is satisfied that any money, bullion, jewellery or other valuable articles or things, books of account or document seized requisitioned (in the course of search of someone else) belong to other person, such person can be assessed on the same line that of S. 153A.
- Here also pending Assessment abate
- The assessments are to be completed within 21 months from the end of the financial year in which the search was carried
- **LMJ International 14 DTR 540 (Kol ITAT)**- If nothing incremental is found, the original assessment can not be disturbed. **Also in Prithvi Developers- 40 CCH 0459 (Bang)**

Dispute Resolution Panel (DRP)

In the following cases, the assessee can go to DRP instead of filing an appeal before CIT(A)

- **Transfer Pricing Assessment**
- **Assessment of Foreign Companies**

Any assessment order (in above case) without giving draft assessment order and opportunity to allow to chose DRP route is null - Pune ITAT in Suktas India

DRP Process

- The Assessing Officer should give draft Assessment Order
- Within 30 days the assessee should accept the order or file objection in Form 35A to DRP
- DRP should give their direction within 9 months from the end of the month in which the objections are filed.
- DRP proceedings are extension of assessment proceedings
- The final order must be given by the Assessing Officer within one month from the end of the month in which the DRP directions are received.
- DRP Order is Binding on AO and is not Appealable by Revenue but assessee can go in appeal to ITAT on receipt of Final Order.



Appeal before CIT(A) and ITAT

APPEAL FEES

Income or Loss (Rs.)	CIT (Appeals) Fees (Rs.)	ITAT Fees (Rs.)
0 to 1,00,000/-	250/-	500/-
1,00,001/- to 2,00,000/-	500/-	1,000/-
2,00,001/- and above	1,000/-	10,000/-

NOTE:- Fees for Appeal other than against the Assessment Order should be Rs. 500/- in case of Appeal to ITAT as held in **Dr. Ajithkumar Pandey Vs. ITAT 310 ITR 195 (Pat)**. However, take a call whether to go by same as some Tribunals have taken a different view.

Appeal to CIT (Appeal)

- Time limit for filing appeal– 30 days from the receipt of the order
- Form to be used: Form 35
- The appeal should be filed online by using Digital Signature or E-Verification
- The appeal should be supported by Grounds of Appeal and Statement of Facts.
- Other documents required to be attached are discussed in next slide

Other Documents required to be given as attachment

- Order Appealed against
- **Notice of Demand** – in case of appeal to CIT(A) only.- If Notice of Demand is lost, get duplicate duly signed by the A.O. **But Notice of Demand is must.**
- If Appeal is against penalty, then the assessment order from which the penalty has arisen
- DRP Direction, where applicable
- Any other order (for e.g. Order U/s 263) which supports the understanding of issues in appeal
- **In case of Appeal before CIT(A), all these documents should be attached as PDF file.**

Condonation of Delay

- If the appeal is being filed late, make sure that you make application for Condonation of delay, stating reasons and such reasons be supported by an AFFIDAVIT.
- While Filing appeal online, one must attach affidavit narrating reasons for delay in filing of an appeal.

Condonation of Delay Contd...

Improvement Trust vs. Ujagar Singh (SC) (ITAT Online)

- Justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities
- Unless malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. the appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation.

Procedure in Appeal – CIT(A)

- CIT(A) will give opportunity (hearing)
- Advised to make submission in paper book.
- Submission should be supported by good and relevant case laws.
- CIT(A) gives an opportunity to AO also, but separately.
- Sometimes Remand Report – Discussed in next slide.
- Finally, CIT (Appeal) will give his order– Now he has no power to set aside any assessment.

Remand Report

- Sometimes, CIT(A) remands some matter to AO for verification and calls for Remand Report. (S. 250)
- It is the right of assessee to get a copy of the Remand reference and Remand Report.
- For some issues, AO may have to give opportunity to the Assessee
- The assessee has right to make further submission to counter any issue in the Remand Report.

Additional Evidences – Rule 46A

- Cannot be admitted as a general rule.
- However, if Appellate Authority ask for – no issue – make sure asking is recorded.
- Can be admitted only if
 - A.O. refused to admit OR
 - Appellant prevented for sufficient cause to produce such evidence, provided it is relevant for Grounds of Appeal.
 - Assessment Order made without giving sufficient opportunity.
- Can be admitted by Appellate Authority only after recording reasons
- Revenue must be allowed to rebut the evidence or cross examine the witness

Appeal before ITAT

- Appeal can be filed Assessee as well as by Revenue against the order of CIT(A)
- Time limit for filing appeal– 60 days from the receipt of the order
- Form to be used: FORM 36 (form 36B if the appeal is against the assessment order in pursuance to DRP direction)
- The appeal should be filed in triplicate
- The appeal should be accompanied by Grounds of Appeal- Statement of Facts is optional
- Other documents required to be attached are similar to what are required to be attached in case of Appeal before CIT(A)– However, these documents should be certified copies – Notice of demand is not required

Procedure Before ITAT

- Upon receiving the notice of hearing, one should file Paper Book of papers on which the assessee relies for his Grounds of Appeal) (3 to 7 clear days before the date of hearing)
- The paper book should be filed in Triplicate
- The opponent party can file cross objection in Form 36A – within 30 days from the date of receipt of Appeal Memo, which also will be heard simultaneously
- The hearing shall generally be in open court where both the parties will present their case and arguments .
- In a case of non appearance on the date of hearing, there are chances of ex-party decision and most likely to be rejection of appeal- However, one can file MA in case of genuine reason.

Procedure before ITAT and orders

- The issue of submission of fresh evidence is similar to that before the CIT(A)
- Fresh grounds can be taken before ITAT provided the same are of law and does not require fresh materials.
- ITAT has power to set aside the order to the file on lower authority or even quash the order.
- Rectification of the orders of ITAT is possible by way of filing of Misc. Application. There is an issue of time limit (6 months from the date of order)

Thank You



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