

Appeals under Income Tax (Including Demonetization)



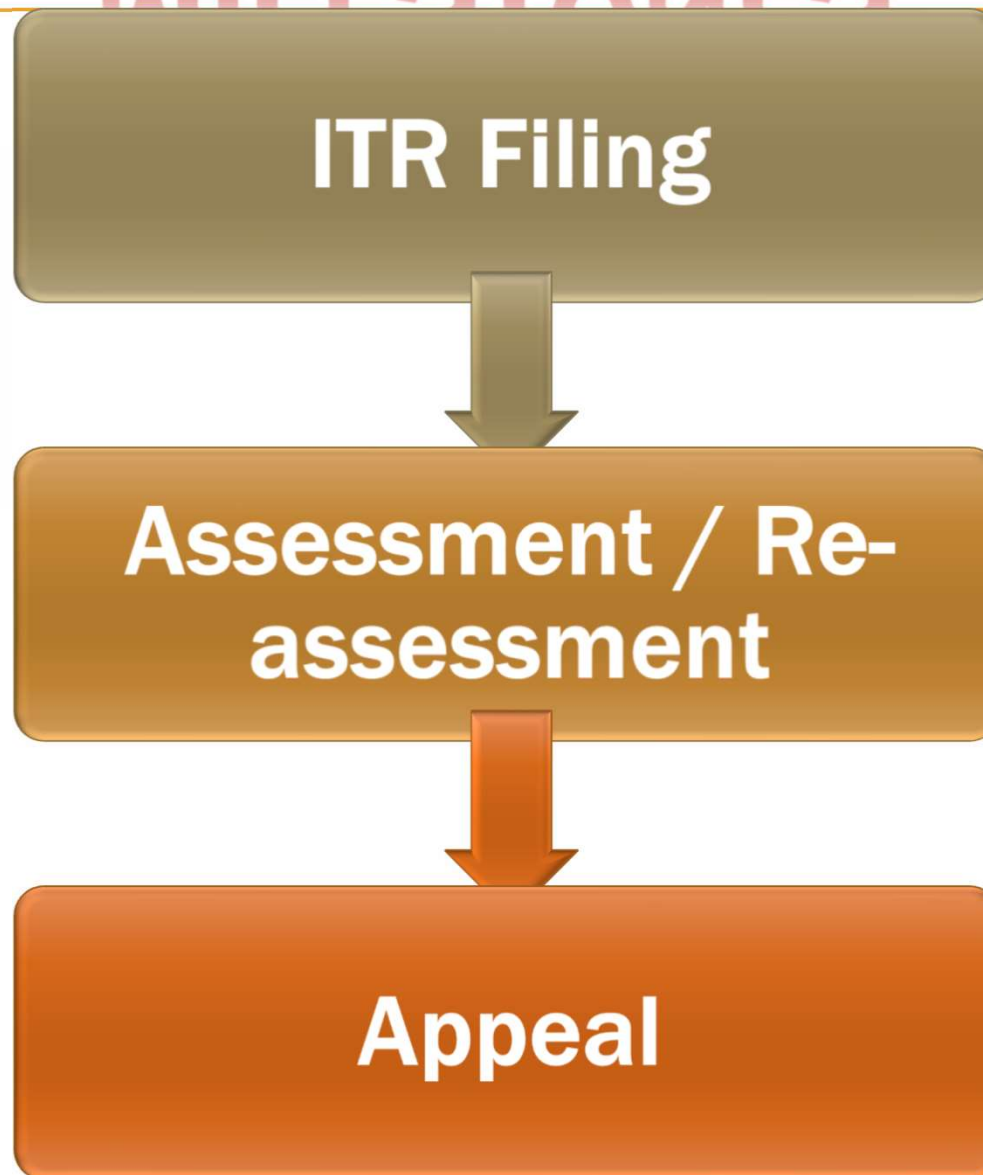
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FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

Type your text

Chandigarh Branch of NIRC of ICAI

MILESTONES



EMPHASIZE

Study



Drafting Appeal & File



Submission & Representation

PROVISIONS - SECTIONS

246A

- Appealable Order

248

- Appeal by person defying liability to deduct tax in certain cases

249

- Form of appeal and limitation

250

- Procedure in appeal

251

- Power of commissioner (appeal)

RULES

R 45

- **Form of commissioner (appeal)**

R. 46

- **Mode of Services**

R. 46A

- **Production of Additional Evidence**

F. 35

- **Appeal Form**

STUDY

- **Read Order carefully – Note shortcomings**
 - **Name /Status**
 - **DIN**
 - **AY**
- **Emphasise on:**
 - **Error of Facts / Law**
 - **Additions & Basis / provision to make so**
 - **Disallowances & reasons**
 - **Claims made & not allowed**
 - **Irrelevant case laws applied, if any**

STUDY

- **Calculation of taxes & interests**
- **Study the assessment proceedings records**
 - **Date wise arrangement of assessee's assessment proceeding record and flagging the relevant pages**
 - **Notice or show cause issued & its reply**
 - **Details submit /documents filed in support in respect of subject matter of assessment order**
 - **Material & evidences placed dur assessment**
 - **Event chart date wise**

DRAFTING OF APPEALS – CIT (A)

- **Take care of timelines – 30 days**
- **Draft Form 35 carefully – be precise**
 - **Statement of Facts**
 - **Grounds of Appeal**
- **Power of Attorney**
- **Deposit of Tax Demanded**

STATEMENT OF FACTS

- **Facts or written submission**
- **Status of assessee**
- **Business – Manufacture, Trading, Service, Export etc**
- **Return filed – Income declared of Rs.....**
- **Picked up for Scrutiny and assessment completed on income of Rs.....**
- **Brief additions/disallowances made by the assessing officer**

GROUNDS OF APPEAL

- **Brief or detailed**
- **Start with – The Learned Assessing Officer**
- **Grounds relating:**
 - **Erred in facts / law**
 - **Erroneous observation**
 - **Misrepresentation of provisions**
 - **Ignored the claim or not allowed the claim**
 - **Not considered case law in favour or applied the irrelevant case law etc....**
- **And in last - The appellant craves leave to add, amend, modify, delete and or change any of the ground on or before the date of hearing.**

DRAFT GROUNDS OF APPEAL

- **That the Order of the Id. A.O. is bad in law and against the facts of the case.**
- **That the Ld. A.O. erred in invoking provisions of section 148.**
- **That the Id. A.O. erred in making addition on account of Cash sales being unexplained cash credit u/s 68 of the Act of Rs. ____.**
- **That the Id. A.O. erred in making addition on account of unexplained money u/s 69A of the Act of Rs. ____.**

DRAFT GROUNDS OF APPEAL

- **That the Id. AO erred in making addition of Rs. _____ by treating cash sales as bogus sales.**
- **That the Id. AO erred in initiating penalty u/s 270A.**
- **That the Id. A.O. also erred in not following various judgments of jurisdictional High Court and ITAT.**

DRAFT GROUNDS OF APPEAL

- That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.
- **PRAYER** - On the facts and in the circumstances of the case and in view of judicial precedents, it is humbly prayed that:
 - Order passed u/s 143(3)/147 be quashed and set aside;
 - Addition of Rs. _____ be deleted; and
 - Penalty proceedings u/s 270A of the Act be dropped

FILING FEE

- **Assessed Income:**
 - **Less than Rs. 1 Lac – Rs 250/-**
 - **Rs. 1 Lac to Rs. 2 Lacs – Rs. 500/-**
 - **More than Rs. 2 Lacs – Rs. 1000/-**
- **Other Cases – Rs. 250/-**

REPRESENTATION BEFORE CIT(A)

- **When to start ?**
- **Waiting for notice ?**
- **Need inspection of file and or copy of assessment record ?**
- **Written submission**
- **Paper book**
- **Additional evidence**

WRITTEN SUBMISSION

- **Facts :**
 - **General**
 - **Specific with reference to each ground**
- **Ground wise AO's observation and reason and allegation imposed for additions /disallowances etc .**
- **Objection / reply on observation and reasons /demolish the allegation imposed by the Ld. AO**
- **Case law reliance**
- **References of paper book in written submission**

REPRESENTATION

- **Formal dress**
- **Be well prepared - Have brief note in your hand about ground raised, facts about each ground, relevant pages & para of paper book & relevant case law reference.**
- **Consider that CIT(A) does not know about appellant and assessment order**
- **Conclude all grounds of appeal one by one**
- **Always be alert and be watchful and see body language of the CIT(A) and accordingly change your flow of presentation**

ADDITIONAL EVIDENCE

- Application to be made in duplicate
- With prayer for acceptance of additional document along with justification & specifically mention the sub rule of Rule 46 A in which these paper are being filed.
 1. Where AO **refused to admit** the said evidence which ought to have been admitted
 2. Where appellant was **prevented by sufficient cause from producing evidence called upon by AO** or relevant to any ground in appeal
 3. Where appellant was **prevented by sufficient cause from producing** the AO any evidence which is relevant to any ground of appeal
 4. Where AO made the impugned order **without giving sufficient opportunity** to appellant



3.jpg



AY 2017-18 ADDITIONS

- **Cash sales / Bogus sales**
 - **Stocks**
 - **Purchases**
 - **Trend past and future**
 - **VAT**
 - **Agreeing to net profit declared**
 - **Rejection of books**

CASH SALES

- **AO held - amount of Rs.59 Crs is hereby disallowed u/s 68 & added back to the total income of the assessee company.**
 - **Para 8 – It seems that AO has probably not understood scope of S. 68. S. 68 is not for purpose of allowability or disallowability of any deduction & moreover, question of disallowance may arise in respect of any expenditure or allowance claimed by assessee. In respect of a sale consideration, there cannot be any question of any disallowance.**
 - ***Singhal Exim P. Ltd. Vs. ITO – ITA No. 6520/Del/2018 dt. 12.4.2019***

CASH SALES

- Only margin can be added
 - *ITO vs. Pavan Kumar Bhagatram Sharma – ITA No. 1652/Ahd/2011 dt. 11/4/2016*
 - *ITO vs. Pankaj Agarwal ITA No. 7091/Del/2014 dt 16.5.18*
- Sales can be in cash and it is hardly necessary for the seller to bother about the name & address of the purchaser -
R.B.Jessaram Fatehchand (Sugar Deptt)
VS. CIT (1970) 75 ITR 33 (Bom)

CASH SALES

- It is but natural that if a customer makes cash purchase & lifts the goods, there is no duty cast upon seller to insist for address of the purchaser. In light of the fact that stock record was available with assessee, which evidenced making of sale, we fail to appreciate as to how any addition can be made by treating cash sales as bogus.
- *Kishore Jeram Bhai Khaniya, Prop. M/s Poonam Enterprises vs. ITO - ITA No. 1220/Del/2011 dt. 13.5.2014*

DEPOSIT AFTER WITHDRAWAL

- **Time gap!**
- **Merely because there was a time gap between withdrawal of cash & deposits explanation of assessee could not be rejected & addition on could not be made particularly when there was no finding recorded by AO or CIT(A) that apart from depositing this cash into bank as explained by assessee, there was any other purposes it is used by the assessee of these amounts**
 - **ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi)**
 - **Neeta Bareja v. ITO – ITA No. 524/Del/2017 dt 25.11.19**

OTHERS

- Sales made in SBN itself
- Books rejected u/s 145
 - AO is not satisfied about
 - Correctness or
 - Completeness of a/cs, or
 - Where ICDS not followed
- Orders u/s 144
- Additions u/s 68 / 69A
- Penalties u/s 270A / 271AAC

TAKE CARE

- It is not an isolation case... but mass...
- Each case is different ..and should be handled differently and carefully
- Tax u/s 115BBE !!
- Stay of Demand !!

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answers

Q. How I file income tax return

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THANKS



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