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## APPEAL TO THE INCOME TAX APPELLATE TRIBUNAL

### Introduction

The Commissioner of Income-Tax (Appeals) is the first appellate authority and the Income Tax Appellate Tribunal (ITAT) is the second appellate authority. Appeal to the ITAT can be filed by any of the aggrieved party either by the taxpayer or by the Assessing Officer.

The ITAT is constituted by the Central Government and functions under the Ministry of Law. ITAT consists of two classes of members – Judicial and Accountant. In this part you can gain knowledge about various provisions relating to appeals to the ITAT.

### Appealable orders in case of appeal by the taxpayer

A taxpayer can file an appeal to the ITAT in respect of following orders:

- Rectification order passed by the Commissioner of Income-Tax (Appeals) under section 154; or
- Order passed by the Commissioner of Income-Tax (Appeals) under section 250, section 270A, section 271, section 271A, section 271AAB, section 271AAC, section 271AAD, section 271J or section 272A; or
- Order passed by a Joint Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271AAC, section 271AAD or section 271J; or
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 12AA or Section 12AB (it relates to registration application made by a charitable or religious trust).
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 80G(5)(vi) (it relates to approval of a charitable trust for donations made to it which would be eligible for deductions in the hands of the donor).
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 263 (it relates to revision of the order of Assessing Officer which is considered as prejudicial to the interest of revenue).
- An order passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 154 for rectification of order.
- An order of penalty passed by a Principal Commissioner of Income-Tax or Commissioner of Income-Tax under section 270A, under section 271 or under section 272A
- An order passed by a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director of



Income-tax under section 263 (it relates to revision of the order of Assessing Officer which is considered as prejudicial to the interest of revenue).

- An order passed by a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director of Income-tax under section 154 for rectification of order.
- An order of penalty passed by a Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director of Income-tax under section 272A.
- An order passed by the Assessing Officer under section 115VZC(1) (i.e., order of excluding the taxpayer from tonnage tax scheme).
- An order passed by the Assessing Officer under section 143(3) or under section 147 or under section 153A or under section 153C in pursuance of the direction of Dispute Resolution Panel or a rectification order passed under section 154 in respect of such order.
- An order passed by the Assessing Officer under section 143(3) or under section 147 or under section 153A or under section 153C with the approval of the Principal Commissioner of Income-Tax or Commissioner of Income-Tax as referred to in section 144BA(12) (i.e., assessment after invocation of General Anti-avoidance Rules) or an order passed under section 154 or under section 155 in respect of such order (applicable from 01-04-2016).
- An order passed by the Commissioner of Income-tax (Exemption) under section 10(23C)(vi) or Section 10(23C)(via) [it relates to filing of application by educational institute or hospital (other than those which are wholly or substantially financed by the Government or whose aggregate annual receipt do not exceed Rs. 1 Cr.) for the purpose of grant of exemption under section 10(23C)(vi) or section 10(23C)(via), respectively.]
- An order passed by the Commissioner of Income-tax (Exemption) under section 10(23C)(iv). It relates to approval of a charitable institution or fund for exemption under section 10(23C)(iv) having regard to its objects and its importance throughout India or throughout any State or States.
- An order passed by the Commissioner of Income-tax (Exemption) under section 10(23C)(v). It relates to granting exemption under section 10(23C)(v) to any trust (including any other legal obligation) or institution formed wholly for public religious purposes or wholly for public religious and charitable purposes.

#### **Appealable orders in case of appeal by the Commissioner**

If the Principal Commissioner of Income-Tax or Commissioner of Income-Tax objects to the order passed by the Joint Commissioner of the Income-tax (Appeals) or the Commissioner of Income-Tax (Appeals) under section 154 or section 250, then he may direct the Assessing Officer to make an appeal to the ITAT against the orders of the Commissioner of Income-Tax (Appeals). This is called as departmental appeal, i.e., the Income-Tax department moving to ITAT against the order of the Joint Commissioner of Income-tax (Appeals) or the Commissioner of Income-Tax (Appeals).

The departmental appeal shall be allowed only in cases where the tax effect involved in the appeal exceeds Rs. 50,00,000. In other words, the Commissioner of Income-Tax can direct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) only in those cases in which the tax effect exceeds Rs. 50,00,000 [refer Circular No. 17/2019, Dated 08-08-2019].

### **Appeal not to be filed by the department in certain cases**

The Commissioner of Income-Tax cannot direct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) in those cases in which the tax effect does not exceeds Rs. 50,00,000

“Tax effect” means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed Issues”). However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every taxpayer. If in the case of a taxpayer the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified above. No appeal shall be filed by department in respect of an assessment year or years in which the tax effect is less than the monetary limit specified above.

In other words, henceforth, appeals can be filed by Commissioner of Income-tax only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed.

In case where a composite order/judgment involves more than one taxpayer, each taxpayer shall be dealt with separately.

Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified above or there is no tax effect.

- a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- b) Where Board’s order, Notification, Instruction or Circular has been held to be illegal or ultravires, or
- c) Where Revenue Audit’s objection in the case has been accepted by the Department.
- d) Writ matters

- e) Matters pertaining to other direct taxes, i.e., other than Income-Tax
- f) Where the tax effect is not quantifiable or not involved, such as case of registration of trust or institution under section 12A.
- g) Where the addition relates to undisclosed foreign assets/bank accounts.

### **Time- limit for presenting appeal**

Appeal to ITAT is to be filed within a period of 60 days from the date on which order sought to be appealed against is communicated to the taxpayer or to the Principal Commissioner of Income-Tax or Commissioner of Income-Tax (as the case may be).

The ITAT may admit an appeal even after the period of 60 days if it is satisfied that there was sufficient cause for not presenting the appeal within the prescribed time.

With effect from 01-10-2024, appeal before ITAT shall be filed within 2 months from the end of the month in which the order sought to be appealed against is communicated to the taxpayer or to the Principal Commissioner of Income-Tax or Commissioner of Income-Tax (as the case may be).

### **Form and signature**

The appeal to ITAT shall be filed in Form No. 36. In case of appeal by the taxpayer, the form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under section 140. In other words, the Form of appeal is to be signed by the following persons:

1. In case of appeal by the individual taxpayer, by the individual taxpayer himself or by a person duly authorised by him who is holding a valid power of attorney
2. In case of a Hindu Undivided Family by the Karta of the family or if Karta is absent from India or is not capable for signing, by any other adult member of such family.
3. In case of a company by the Managing Director or if Managing Director is not available or where there is no Managing Director by any director of the company.
4. In case of a firm by the Managing Partner or if Managing Partner is not available or where there is no Managing Partner by any partner (not being a minor)
5. In case of a LLP by the Designated Partner or if Designated Partner is not available or where there is no Designated Partner by any partner.
6. In case of a Local Authority by the Principal Officer thereof
7. In case of a Political Party by the Chief Executive Officer of such party
8. In case of any other Association by the Principal Officer thereof or by any member of the Association.
9. In case of any other Person by that Person or by some person competent to act on his behalf.

### **Memorandum of cross objection**

On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT.

The memorandum of cross objection is to be filed within a period of 30 days of receipt of notice. The memorandum of cross objection is to be filed in Form No. 36A. There is no fee for filing the memorandum of cross objection. The ITAT may accept a memorandum of cross objection even after the period of 30 days if it is satisfied that there was sufficient cause for not submitting the same within the prescribed time.

Person who is competent to sign Form 36 (i.e., form of appeal) has to sign and verify the memorandum of cross objections. The ITAT will dispose of the memorandum of cross objections like an appeal in Form 36.

#### Documents to be submitted with appeal

- Form No. 36 - in triplicate.
- Order appealed against - 2 copies (including one certified copy).
- Order of Assessing Officer - 2 copies
- Grounds of appeal before first appellate authority [i.e., Commissioner of Income-Tax (Appeals)] - 2 copies.
- Statement of facts filed before first appellate authority [i.e., Commissioner of Income-Tax (Appeals)] - 2 copies.
- In case of appeal against penalty order – 2 copies of relevant assessment order.
- In case of appeal against order under section 143(3), read with section 144A - 2 copies of the directions of the Joint Commissioner under section 144A.
- In case of appeal against order under section 143, read with section 147 - 2 copies of original assessment order, if any.
- Copy of challan for payment of fee.
- In case of appeals to the ITAT on or after 1-10-1998 (irrespective of the date of initiation of assessment proceedings), the following fees are payable:

#### Fees for filing the appeal

Where assessed income (*) is :	
up to Rs. 1,00,000	Rs. 500
more than Rs. 1,00,000, but up to Rs. 2,00,000	Rs. 1,500
more than Rs. 2,00,000	1% of assessed income (\$)

(\*) Assessed income means total income as computed by the Assessing Officer.

(\$) Subject to a maximum of Rs. 10,000





## Fees for filing the appeal in other cases

Where application is under section 254(2)	Rs. 50
Where subject-matter of appeal relates to any other matter	Rs. 500
Where application is for stay of demand	Rs. 500
Where Appeal is filed u/s 253(2) or a memorandum of a Cross objection referred u/s 253(4)	NIL

### Submission of paper book

The appellant or the respondent, i.e., the opposite may submit a paper book. A paper book is to be submitted in duplicate and should contain documents or statements or other papers referred to in the assessment order or the appellate order on which appellant/respondent wants to rely.

The paper book should be duly indexed and page numbered. It should be filed at least a day before the hearing of the appeal. It should be filed along-with the proof of service of copy of the paper book to the opposite party at least a week before. Each paper in the paper book is to be certified as true copy by the party filing the same.

The delay in filing the paper book may be condoned in genuine cases of delay.

The ITAT can also on its own direct the preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal.

Additional evidence, if any, should be filed separately and should not form part of the paper book.

### Hearing of the appeal by the ITAT

The ITAT will fix the date of hearing along with the place of hearing the appeal and will also notify the parties.

A copy of memorandum of appeal is to be sent to the respondent either before or along with such notice. The ITAT will hear the appeal on the date fixed. The appeal may be adjourned on other dates and in such a case the appeal will be heard on the respective dates.

If the appellant is called by the ITAT but fails to appear before the ITAT either in person or through an authorized representative, the appeal may be disposed of by the ITAT on merits after hearing the respondent.

Subsequent to ex parte hearing, if the appellant appears before the ITAT and satisfies the ITAT that there was sufficient cause in his case for non-appearance before the ITAT, then set aside the ex parte order and restore the appeal. Similar procedure is applicable where appeal is disposed of in the absence of respondent.



## Filing of additional evidence

Filing of additional evidence before the ITAT by parties to the appeal is not permitted. In other words, additional evidence of any kind, either oral or documentary cannot be filed before the ITAT. However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.

## Order of the ITAT

The member of bench of the ITAT hears the appeal. After hearing the appeal the ITAT will pronounce its order and will communicate the order to the taxpayer as well as the Assessing Officer.

Appeals are heard by a Bench comprising one judicial member and one accountant member. Appeals where total income computed by the Assessing Officer does not exceed Rs. 50 lakh may be disposed of by single member Bench.

If the members of the Bench differ in opinion on any point, the decision is taken on the basis of majority. If members are equally divided in their opinion, the points of difference are stated by each member and the case is referred by the President of the ITAT for hearing such points by one or more of other members of the ITAT. Such point or points is decided according to opinion of majority of the members of ITAT who have heard the case, including those who first heard it.

Normally, the Bench pronounces its orders in Court. However, where the orders are not pronounced in the Court, list of such orders showing results of appeal and signed by members is put up on the notice board of the Bench.

## Disposal of appeal

Where it is possible, the ITAT shall dispose off the appeal within a period of four years from the end of the financial year in which appeal is filed.

## Stay application

The ITAT may, on an application made by the taxpayer and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under section 253(1). The stay order will be in operation for a period not exceeding 180 days from the date of such order. The ITAT shall dispose of the appeal within the said period of stay specified in that order.

However, the stay shall be granted by the ITAT only when the assessee has 'deposited' or 'furnished security' to the extent of 20% of his tax liabilities (i.e. tax, interest, fee, penalty or any other sum payable under the provisions of this Act). *[Inserted by the Finance Act, 2020, Applicable w.e.f. Assessment Year 2020-21]*

If such appeal is not so disposed of within the period of stay specified in the order of stay, the ITAT may extend the stay period, on an application made in this behalf by the taxpayer on being satisfied that the delay in disposing of the said appeal is not attributable to the taxpayer. The extension of stay period can be for a further period or periods, as the ITAT thinks fit, but the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the

Appellate Tribunal shall dispose of the said appeal within the period of stay so extended or allowed.

If the appeal is not disposed off within the period allowed or within the period or periods extended, which shall not in any case exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the taxpayer.

### **Rectification of Appellate Order**

The ITAT may, at any time within 6 months from the end of the month in which the order was passed, rectify any mistake apparent from record, amend any order passed by it if the mistake is brought to its notice by the taxpayer or Assessing Officer. However, where such amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing a liability of the taxpayer, it shall not be made unless the Appellate Tribunal has given a notice to the taxpayer of its intention to do so and has allowed the taxpayer a reasonable opportunity.

### **Faceless Proceedings before ITAT**

To impart greater efficiency, transparency and accountability for the purpose of disposal of appeals by the Appellate Tribunal, the Central Government may make a scheme by:

- a) Eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;
- b) Optimizing utilization of the resources through economics of scale and functional specialization;
- c) Introducing an appellate system with dynamic jurisdiction.

The Central Government may, for the purpose of giving effect to the scheme, issue notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

Such directions are to be issued on or before 31st March, 2025. Further, every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.





## MCQ ON APPEAL TO THE INCOME TAX APPELLATE TRIBUNAL

**Q1.**The Income Tax Appellate Tribunal (ITAT) is the second appellate authority.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

The Income Tax Appellate Tribunal (ITAT) is the second appellate authority.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q2.**Appeal to the ITAT cannot be filed by an Assessing Officer.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Appeal to the ITAT can be filed by any of the aggrieved party either by the taxpayer or by the Assessing Officer.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q3.**Rectification order passed by the Commissioner of Income-Tax (Appeals) under section 154 is the final order and the taxpayer cannot file an appeal to the ITAT against such order of the Commissioner of Income-Tax (Appeals).

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

A taxpayer can file an appeal to the ITAT in respect of few specific orders. One of them is the rectification order passed by the Commissioner of Income-Tax (Appeals) or the Joint Commissioner (Appeals) under section 154. In other words, a taxpayer can file appeal to the ITAT against Rectification order passed by the Commissioner of Income-Tax (Appeals) under section 154.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q4.**Departmental appeal means \_\_\_\_\_.

- (a) Appeal filed by the taxpayer against the order of CIT (Appeals) to the ITAT  
(b) Appeal filed by the Income-tax department against the order of CIT (Appeals) or JCIT (Appeals) passed under section 154 or 250 to the ITAT  
(c) Appeal filed by the taxpayer against the order of ITAT to the High Court  
(d) Appeal filed by the taxpayer against the order of ITAT to the Supreme Court

**Correct answer : (b)**







**Q8.** On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross objection with the ITAT.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q9.** Where assessed income is more than Rs. 2,00,000 then fess for filing an appeal with the ITAT is \_\_\_\_\_.

- (a) Rs. 500 (b) Rs. 1,000  
(c) Rs. 1,500 (d) 1% of assessed income subject to a maximum of Rs. 10,000

**Correct answer : (d)**

**Justification of correct answer :**

Where assessed income is more than Rs. 2,00,000 then fess for filing an appeal with the ITAT is 1% of assessed income subject to a maximum of Rs. 10,000. Thus, option (d) is the correct option.

**Q10.** The ITAT shall dispose off the appeal within a period of four years from the end of the financial year in which appeal is filed.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

The ITAT shall dispose off the appeal within a period of four years from the end of the financial year in which appeal is filed.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

