

MBA (Business Economics) IV Semester

Paper- Business Tax Management (405-FM)

UNIT- V Topic- Assessment Procedure and Appeal and Revision

Income Tax Assessment Procedure

Ascertaining total income is one major task of the procedure involved in levying tax on an assessee. The task of assessing the income returned and determination of tax liability is called 'assessment'. The term 'assessment' has been used in the Income-tax Act meaning differently contexts. In certain situations, it refers to computation of income, sometimes to the determination of tax payable and in some cases to the whole procedure laid down in the Act of imposing tax liability on assessee.

Assessment of income relating to one Financial Year (FY) starts in the succeeding financial year, which is called Assessment Year (AY). Income tax assessment procedure begins when an assessee files his return of income to the income tax department.

Filing of return [Sec 139 (1)]

A person has to file return of income in the prescribed form within the specified time limit if his total income exceeds the maximum non-taxable limit. A person other than a company though income is less than the nontaxable limit, who satisfies any one of six economic criteria and residing in a specified area.

1. Ownership of a motor vehicle other than a two wheeler
2. Occupation of any category of immovable property as may be notified by the CBDT
3. Incurred expenditure on foreign travel by himself or in respect of any other person. Travel to Bangladesh, Pakistan, Bhutan, Nepal, Maldives, Sri Lanka and Saudi Arabia for hajj or china on pilgrimage to Manasarover are excluded.
4. Holder of a credit card other than an add on card
5. Member of a club where entrance fees charged is Rs.25000 or more
6. Expenditure of Rs.50000 or more during the PY towards consumption of electricity.

Time of filing of return [Sec 139 (2)]

1. In the case of a company, due date of submission is October 31
2. In the case of person other than a company

3. Where audit is compulsory, due date of filing return is October 31
4. In any other case, the due date of filing of return is July 31

Return of loss [Sec 139 (3)]: Return can also be filed in the prescribed form in respect of loss suffered by the assessee. It is not compulsory to file a return of loss, but certain losses can be carried forward only on filing return of loss

Belated return [Sec 139(4)]: If the return is not furnished within the time, the person may furnish the return of any PY at any time before the end of one year from the end of the relevant AY or before making assessment whichever is earlier. An assessee who files belated return are liable for penal interest

Revised return [Sec 139(5)]: If after filing a return of income or in pursuance of a notice the assessee discovers any omission or wrong statement in return originally filed, he can file a revised return. It should be filed within one year from the AY or before the completion of assessment whichever is earlier.

Defective return [Sec 139(9)]: Where the AO finds that the return filed by an assessee is defective he should intimate the assessee about the defect and give him an opportunity to rectify the defects within 15 days from the date of intimation or within such further extended time as the AO may allow. If the defect is not rectified within the time allowed, the return will be treated as invalid and it will be deemed that no return has been filed by the assessee attracting penal interest.

Appeal and Revision

Appeal

An appeal is whereby an individual petition for the case to be heard in a new court. In most cases, the case is heard on a higher court from the previous one. In simpler terms, an unsuccessful party in a case decides to take the case to a higher court to seek for reversal of a decision made by a lower court. The party that files an appeal believes that there were errors made either on the laws or facts raised.

Provisions relating to Appeal

APPEALS TO COMMISSIONER (APPEALS)246A TO 249]

Appealable orders	Please <i>see</i> section <u>246A</u>
Time limit for presenting appeal	Appeals should be presented within 30 days of the following date : <ul style="list-style-type: none"> • 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

	<p>service of notice of demand relating to the assessment or penalty</p> <ul style="list-style-type: none"> • in any other case, the date on which intimation of the order sought to be appealed against is served <p>The Commissioner (Appeals) may admit belated application on sufficient cause being shown.</p>
Form of appeal	<p><u>Form No. 35</u> the CBDT had substituted the Rule 45 of Income-tax Rules, 1962 relating to filing of Form of appeal to CIT(A) vide Income-tax (3rd Amendment) Rules, 2016.</p> <p>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.</p>
Signing of Form	<p>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 as applicable to the assessee.</p>
Documents to be submitted	<p><u>Form No. 35</u> (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.</p> <p>One copy of order appealed against</p> <p>Notice of demand in original</p> <p>Copy of challans 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.</p>
Court fee stamp	<p>Court fee stamp of 50 paise is to be affixed on the first copy of <u>Form No. 35</u>.</p>
Fee	<p>In case of appeals to Commissioner (Appeals) (irrespective of date of initiation of assessment proceedings) the following fee is payable :</p> <p>Where assessed income is Rs. 1,00,000 or less - Rs. 250.</p> <p>Where assessed income is more than Rs. 1,00,000 but not more than Rs. 2,00,000 - Rs. 500.</p> <p>Where assessed income is more than Rs. 2,00,000 - Rs. 1,000.</p> <p>Where subject-matter of appeal is not covered under any of the above - Rs. 250.</p>
Disposal of appeal	<p>Within a period of one 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 (<i>Instruction No. 20/2003, dated 23-12-2003</i>)</p>

APPEALS TO TRIBUNAL [SECTIONS 252 TO 255] [SECTIONS 246A TO 249]

<p><u>Appealable orders:</u></p> <p>- Appeal by assessee 1-10-1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or</p>	<ul style="list-style-type: none"> • An order passed by Deputy Commissioner (Appeals) before • An order passed by an Assessing Officer under clause (c) of <u>section 158BC</u>, in respect of search initiated under <u>section 132</u> or books of account, other documents or any assets requisitioned under <u>section 132A</u>, after 30-6-1995, but before 1-1-1997; or • An order passed by a Principal Commissioner/Commissioner under <u>section 12AA</u> or under <u>section 271</u> or under <u>80G(5)(vi)</u> or under <u>section 263</u> or <u>section 271</u> or under <u>section 272A</u> or an order passed by him under <u>section 154</u> amending his order under <u>section 263</u> or an order passed by a Principal Chief Commissioner or Principal Director General or Principal Director or Chief Commissioner or a Director General or a Director under <u>section 272A</u>. • An order passed by AO under <u>section 115VZC(1)</u>. • An order passed by the Assessing Officer under <u>section 143(3)</u> or under <u>section 147</u> or <u>section 153A</u> or <u>section 153C</u> in pursuance of the directions of the Dispute Resolution Panel or an order passed under <u>section 154</u> in respect of such order. • An order passed by an Assessing Officer under <u>section 143(3)</u> or <u>section 147</u> or <u>section 153A</u> or <u>section 153C</u> with the approval of the Principal Commissioner/Commissioner as referred to in <u>section 144BA(12)</u> or an order passed under <u>section 154</u> or <u>section 155</u> in respect of such order (w.e.f. 1-4-2016).
<p>- Appeal by Principal Commissioner/Commissioner <u>section 144C(5)</u> in respect of</p>	<p>Order passed by Deputy Commissioner (Appeals)/Commissioner (Appeals) under <u>section 154</u> or <u>250</u> Direction issued by the Dispute Resolution Panel under</p>

<p><i>any objection filed on or after 1-7-2012 by the assessee under <u>section 144C(2)</u> in pursuance of which the Assessing Officer has passed an order completing the assessment/reassessment</i></p>	
<p>Time limit for presenting appeal</p>	<p>Within 60 days of the date on which order sought to be appealed against is communicated to the assessee/Principal Commissioner/Commissioner [or within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of <u>section 144C</u>].</p>
<p><i>Form of appeal</i></p>	<p><u>Form No. 36.</u></p>
<p><i>Signing of Form</i></p>	<p>Where appeal is filed by assessee, form is to be signed and verified by person authorised to sign the return of income under <u>section 140</u> as applicable to the assessee.</p>
<p>Documents to be submitted</p>	<p><u>Form No. 36 - in triplicate.</u></p> <ul style="list-style-type: none"> * <i>Order appealed against - 2 copies (including one certified copy)</i> * <i>Order of Assessing Officer - 2 copies</i> * <i>Grounds of appeal before first appellate authority - 2 copies</i> * <i>Statement of facts filed before first appellate authority - 2 copies</i> * <i>In case of appeal against penalty order - 2 copies of relevant assessment order</i> * <i>In case of appeal against order under <u>section 143(3)</u>, read with <u>section 144A</u> - 2 copies of the directions of the Joint Commissioner under <u>section 144A</u>.</i>

	<p><i>* In case of appeal against order u/s <u>143</u>, read with <u>section 147-2</u> copies of original assessment order, if any.</i></p> <p><i>* Triplicate copy of challan for payment of fee.</i></p>
Fee	<p>In case of appeals to ITAT on or after 1-10-1998 (irrespective of the date of initiation of assessment proceedings), the following fees is payable :</p> <ul style="list-style-type: none"> • Where assessed income is up to Rs. 1,00,000 or less - Rs. 500 • Where assessed income is more than Rs. 1,00,000 but not more than Rs. 2,00,000 - Rs. 1,500 • Where assessed income is more than Rs. 2,00,000 - 1% of assessed income subject to a maximum of Rs. 10,000 • Where subject-matter of appeal relates to any other matter - Rs. 500 • Where application is for stay of demand - Rs. 500 • Where application is under <u>section 254(2)</u> - Rs. 50
Paper book	<p>Paper book containing copies of documents, statements or other papers on the file of, or referred to in, the assessment or appellate orders which is proposed to be referred to or relied upon at the time of hearing of the appeal, should be filed, in duplicate, duly indexed and paged at least a day before the date of hearing of the appeal (along with proof of service of a copy of the paper book to the other party at least a week before).</p>
Cost of appeal	<p>Cost of appeal shall be at discretion of Tribunal.</p>
Time limit for filing of cross-objections	<p>Within 30 days of receipt of notice that appeal has been filed by the other party.</p>
Form for filing of cross-objections	<p>Form No. 36A</p>
<i>Stay applications</i>	<p>The Appellate Tribunal may, on an application made by the assessee and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of <u>section 253</u>, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said</p>

	<p>period of stay specified in that order. If such appeal is not so disposed of within the period of stay specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the said appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it 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 three hundred and sixty-five days and the Appellate Tribunal shall dispose of the said appeal within the period of stay so extended or allowed.</p> <p>If such appeal is not so disposed of within the period allowed or within the period or periods extended, which shall not, in any case, exceed three hundred and sixty-five 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 assessee.</p>
Disposal of appeal/rectification application	Within four years from end of financial year in which appeal/rectification application is filed by the assessee/revenue (where it is possible).

APPEAL TO HIGH COURT [SECTION 260A]

Who can file appeal	Assessee or Principal Chief Commissioner/Principal Commissioner/Chief Commissioner/Commissioner.
Order against which appeal to High Court is possible	Any order passed in appeal by the Appellate Tribunal (before the date of establishment of National Tax Tribunal), if the High Court is satisfied that the case involves a substantial question of law.
Fee	As specified in relevant law relating to Court fees for filing appeal to High Court
Time limit for filing appeal	120 days from the date on which order of Tribunal is received by the assessee or the Principal Chief Commissioner/Principal Commissioner/Chief Commissioner or Commissioner. High Court may admit appeal after 120 days if it is satisfied that there was sufficient cause for delay.
Other important	<ul style="list-style-type: none"> The appeal shall be in form of a memorandum of appeal, precisely

issues	<p>stating the substantial question of law involved in the appeal.</p> <ul style="list-style-type: none"> • Where the High Court is satisfied that a substantial question of law is involved, it should formulate the question. • Where the High Court delivers a judgment, effect shall be given to order passed by AO on basis of certified copy of judgment. • The appeal to be heard only on the question to be formulated (however, the Court has the power to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question). • High Court can award such costs as it deems fit. • The High Court may determine any issue which— <ul style="list-style-type: none"> ○ has not been determined by the Appellate Tribunal; or ○ has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1). • The appeal is to be heard by a Bench of not less than 2 judges of the High Court. Decision will be in accordance with opinion of majority of judges. • Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court.
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Appeal to Supreme Court

An appeal shall lie to the Supreme Court from any judgment of the High Court delivered before the establishment of the National Tax Tribunal] on a reference made under section 256 against an order made under section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under section 254 on or after that date in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

Hearing before the Supreme Court

- The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

- The costs of the appeal shall be in the discretion of the Supreme Court.
- Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

Revision

Revision of an Income Tax order is performed when a taxpayer feels that an income tax assessment order forwarded by the assessing officer was unjust or unreasonable. Income Tax orders can also be revised in a manner which causes enhancement of the taxpayer's tax liability. A Principal Commissioner or Commissioner of the Income Tax Department is empowered with the rights to enhance, annul or modify an income tax order if the officer feels that the interests of the revenue are at stake due to the erroneous passing of orders by the Assessing Officer.

Revision is the re-examination of legal actions. They may be some assumptions made illegally, non-exercise or exercise of jurisdiction irregularly by a lower court. In this case,, therefore, a higher court reexamines the decisions made by a lower court to know whether all the legal actions were exercised.

Provisions relating to Revision

Revision by the Principal Commissioner or commissioner – u/s 263

by CIT himself if order is prejudicial to the interest of revenue

- ♣ May call for and examine the record of any proceeding under the Act, and if he consider that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interest of revenue.

- ♣ Can modify, cancel or direct fresh assessment

- ♣ Opportunity of being heard to assessee is must

♣ **Time limit:** cannot revise AO order after the expiry of 2 years from the end of financial year in which the order sought to be revised was passed.

♣ Revision order should be speaking order

♣ Order for which revision is taken up should be in existence and served.

Revision by the Principal Commissioner or commissioner – u/s 264

On application of assessee or Suo motu by CIT, provided revision is in favour of assessee

♣ Revision of orders not covered under **section 263**

♣ Shall not revise any order under this section in the following cases:

a) Suo motu, Where the order has been made more than one year previously

b) On application of assessee, where application has been made after one year from the date of order communicated or came to his knowledge, whichever is earlier

c) Where appeal has been filed to CIT(appeals)

d) Where appeal is not filed but the time to file appeal has not expired

♣ **Time limit:** shall pass an order within one year from the end of the financial year in which the application is filed by the assessee. But no time limit in cases where order is to be passed to give effect to any finding / direction contained in any order of the Appellate tribunal, National Tax Tribunal, High Court or the Supreme Court.

♣ Revision order should be speaking order

♣ No appeal can be filed against such orders under **Income Tax Act**, However writ under Article 226/227 is possible.