

EFFECTIVE PRESENTATION BEFORE LD. CIT(APPEALS)

1. Jurisdiction of CIT(A)
2. Corresponding Sections
 - Sec. 246 - Appealable Orders
 - Sec. 246A – Appealable Orders before CIT(A)
 - Sec. 248 – Appeal by a person denying liability to deduct tax in certain cases.
 - Sec. 249 – Form of Appeal and Limitation
 - Sec. 250 – Procedure in Appeal
 - Sec. 251 – Power of the CIT(A)

Appeal means - It amounts to a complaint to a higher forum that the decision of a sub-ordinate officer is erroneous or Removal of a cause from an inferior to a superior court for the purpose of testing the soundness of the decision of the inferior court.

- i. Appeal is a creation of statute and no inherent right vested :**
- ii. Limitation and restrictions placed by the statute –**
As the Appeal is a creation of the statute, the right to appeal has to be exercised by persons permitted by statute to prefer appeals subject to the conditions regarding the filing of such appeals.
- iii. Appellate Authority** may mould relief according to changed law.

- iv. **No right of appeal beyond orders enumerated in Sec. 246/246A.**
- v. **Right of Appeal to be liberally construed.**
- vi. **Tax appeal vis-a-sis Civil Appeal.**
- vii. **Tax Appeal proceedings are not adversary proceeding.**

3. Appealable Orders :

Sec. 246A(1)(a) - **Appeal against an order passed against the assessee** : This section has 3 limbs. The **First limb** concerns – an order against the assessee where the assessee denies his liability to be assessed under the Act. The **Second limb** enable a person, who has been held liable to be assessed under the Act, to prefer appeal against such order if he denies his liability to be assessed under the Act. The **Third limb** provides a right of appeal against the assessment itself.

The expression **“denial of liability”** is comprehensive enough to take into not only the total denial of liability but also the liability to tax under particular circumstances. In one case the assessee says that he is not liable to be assessed to tax under the Act, and in the other case the assessee denies his liability under the provision of the Act. CIT vs. Kanpur Coal Syndicate 53 ITR 225,229 (SC).

The word **“assessed”** in sec 246(1)(a) has been used in comprehensive sense to mean and imply the whole procedure for ascertain and imposing liability on the taxpayer. The

words “under this Act” clearly shows that reference there is to the whole procedure laid down in the Act imposing liability upon the taxpayer. The denial of liability to be assessed in respect of the entire income or part thereof. That is to say the denial must be the liability to be assessed under the Act and not merely under any particular provision of the Act. *Mandal Ginning & Pressing Co Ltd. vs. CIT 90 ITR 332 (Guj.)*.

ii. **Appeal against the order u/s. 143(3) / 144 of the Act :** the Assessee can object

- To the income assessed
- To the amount of tax determined
- To the amount of loss computed
- To the status under which he is assessed

iii. **Appeal against order u/s. 154/155 of the Act :** The appellant can appeal against ;

- Enhancing the assessment or
- Reducing a refund or
- An order refusing to allow the claim made by the assessee u/s. 154/155.

4. Power of CIT(A) :

- a. Power of the first appellate authority larger than those under the Cr. Procedure Code. *CIT vs. Rai Bahadur Motilal Chamaria 66 ITR 443 (SC)*
- b. Powers of first appellate authority are conterminous with AO. *119 CTR (SC) 240.*

- c. First appellate authority is vested with all the plenary powers which the AO has. CIT vs. TTK Krinamachari 223 ITR 224 (Mad.)
- d. Non-exercise of power by the AO may be corrected by the first appellate authority. CIT vs. McMillan & Co 33 ITR 182 (SC).
- e. First appellate authority has duty to correct all errors. Sewduttaroy Rambullav & Sons vs. CIT 204 ITR 580 (Cal.)
- f. First appellate authority has duty to consider a matter in all its aspects. Naraindas Nandlal vs CST 98 STC 17,18 (M.P.).
- g. First appellate authority has right to take evidences not adduced before the AO. Keshav Mills & Co vs CIT 56 ITR 365 (SC).
- i. Additional Ground before the first appellate authority. Addl. CIT vs. Gurjargravures 111 ITR 1,5 (SC), Jute Corporation of India Ltd. Vs 187 ITR 688 (SC).
- j. First appellate authority's power to consider grounds not taken. CIT vs. McMillan & Co 33 ITR 182 (SC).
- k. Competence ranges over the whole assessment. K.P.Moideenkutty vs CIT 131 ITR 356 (Ker.), CIT vs. Rai Bahadur Motilal Chamaria 66 ITR 443 (SC).
- l. First appellate authority's power extend to the entire subject-matter of assessment and not confined to subject-matter of appeal. CIT vs Ahmedabad Crucible Co. 206 ITR 574 (Guj.).
- m. First appellate authority's power to "consider and decide any matter arising out of the proceedings in which the order appealed against was passed". CIT vs Nirbheram Daluram 224 ITR 610 (SC).

- n. First appellate authority's power to grant stay.
- o. First appellate authority's power to confirm, reduce, enhance and annul the assessment order.

5. Common Errors in filing Appeals :

- i. Filling of Form No. 35 (Rule 45) column wise
- ii. Preparing of Statement of Facts to be annexed as A to the Form No. 35.
- iii. Preparing of Grounds of Appeal
- iv. Signing by the person who verify the correctness of facts.
- v. Colm "relief claimed in appeal" should indicate the amount of reduction in income or any other relief sought in appeal.
- vi. Statement of Facts should contained nature of business or profession, state of account books etc. The A should mention the relevant facts in brief separately for each ground of appeal.
- vii. Ground of appeal is required to indicate the points without any argument or narration.

6. How to improve effective representation before Appellate Authority :

- a. As soon as hearing notice is received, the AR should ensure that the Appeal field was in order in all respects. The Authorisation should normally be enclosed with Form No. 35 and in exceptional circumstances it should be submitted at the time of First hearing. No photo-copy authorisation should be submitted.

- b. All submissions ground wise must be in writing.
- c. The observation and the findings of the AO must be proved factually incorrect because of the wrong appreciation of facts and law.
- d. In the course of hearing, the AR must bring minimum of books of a/c. such P&L a/c., B/S and the schedules thereof.
- e. In cases additions made u/s. 68, the bank book/statements should be produced before the authorities.
- f. The AR should have C/f depreciation and Business loss computations during the course of hearing.
- g. All the pages of the submission made must be numbered with indexation. The submission should be in the form of Paper Book which include the details submitted before the AO.
- h. Case laws are relied upon mindlessly without drawing the relevance to the case represented.
- i. Any additional evidences submitted must be with reasons for and the relevance to the fact of the case.
- j. Condonation of delay for late filing of appeal must be supported by “sufficient cause” – a question of facts.
- k. All written submissions should be submitted in soft copy as well.
- l. Finally, the submissions must have clarity on the disputed matter.

7. **Sec. 288: Appearance by the Authorised Representative**
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In view of the complexities of the law of taxation, the assessee may require help of certain class of person. Further lays down the qualification and disabilities for persons want to be AR.

They are bound to act strictly within the instruction of their clients. At the same time they are under an obligation not to misrepresent facts and not to mislead the authorities. They should not be parties in any manner to setting up false defences. At the same time it is not their duty to suspect their clients or to investigate whether their case is true or false. CIT vs. G.M.Dandekar 22 ITR 235 (Mad.).

8. **Sharing a few THOUGHTS on the future Role of VAPI-CA Association;**

- i. **Creation of R&D Cell** : To showcase tacit & explicit Domain Knowledge, to create new Business Model, Interactive platform like Face Book and Social sites where both the clients and the professionals can share views, knowledge and experiences.
- ii. **Create Specialised Domain Knowledge in the Areas**
– TP / International Taxation / GAAR / Merger - Acquisition / Sectoral Specialisation in Infrastructure Projects, Oil & Gas, Information Technology, E-Governance, Nuclear Energy etc. to mention a few.
- iii. **Promote young Talent Pool in the Specialised domain knowledge** in the use of Technology, Finance (Micro Finance) etc. apart from the subjects referred in point ii above.

- iv. **Conduct a Reality Study of the Business Profile** of Vapi-Daman-Silvassa region. This will provide ample work opportunity to all professionals.
- v. **Create a Professional Social Responsibility (PSR) Cell**, (in the line of Corporate Social Responsibility) to help the needy – small/minor income group without charging fee.
- vi. The future World will be virtual, rest-less and impersonal. The 5 forces that will define the future are – **i) the Force of Technology, ii) the Force of Globalisation, iii) the Force of Demography & Logitivity, iv) the Force of Society and v) the Force of Energy Sources.**

In this modern day management even to take a simplest decision, the number of factors to be taken into account exceed our power of imagination. **Two top models** – i) **Spreadsheet software** such as Microsoft Excel and ii) **Networked thinking** model have revolutionised the way we manage our complex finances. The Four field matrices and the Excel Spreadsheets give their users a way of viewing, understanding and organising the world. Similarly, the Networked thinking model offered how to handle complex situations and systematic thinking.

How are we positioned to face these challenges in future ?

Two Models can throw some lights to find solutions to the challenges which you professionals will face – **Black Box Model** – where faith is replacing Knowledge and **Black Swan Model** – why your experiences do not make you any wiser. What were the Black Swans – the unexpected events – in your life and when did they occur ? e.g. chicken, World Trade Centre attack ?