

# PREPARATION OF APPEALS UNDER INCOME TAX ACT, 1961

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**CA SOMIL AGARWAL**

**ACA, ACS, ACMA, DISA, LL.M (UK)**

## Procedure to File Appeal

- Section 246A – Any Assessee ‘Aggrieved’
- Section 249(1) - Prescribed form and manner – Form 35 - Rule 45
- Prescribed Appeal Fees – Only details to be filled

Assessed income	Fee
Less than 1,00,000	250
1,00,000 – 2,00,000	500
More than 2,00,000	1000
Others	250

- Original Demand Notice to be enclosed. Appeal to be filed to CIT(A) mentioned in Demand Notice.
- Statement of Facts
- Grounds of Appeal

- Section 249(2) – 30 days from date of service of notice of demand.
- Second Proviso to 249(2)(b) – cases where 270AA immunity application rejected – exclude period from date of filing application to date on which order rejecting application is served.
- Form of appeal referred to in sub-rule (1), shall be verified by the person who is authorized to verify the return of income under section 140 of the Act, as applicable to the assessee
- Section 249(4) – Tax due on returned income to be paid before filing appeal and if not paid, appeal cannot be admitted.

- **Statements of Facts** – brief and basic facts
- **Grounds of Appeal**
  - Concise and not argumentative
  - Deny liability to be assessed at assessed income
  - Legal/ Jurisdictional grounds
  - Additional grounds – 250(5)
  - Specific grounds – incriminating material, 143(2), book rejection, etc.
  - Opportunity/ violation of principles of natural justice/ cross examination/ confronting adverse material
  - That in any view and in any case .....
  - Levy of interest, credit of prepaid taxes, etc
  - Appellant craves leave to add, alter, modify or delete grounds of appeal

- **Condonation of Delay** - Section 249(3) – CIT(A) has power to condone delay and admit appeal in case assessee has given sufficient cause to his satisfaction for delay.
  - Separate Application to be made and each day's delay must be explained.
  - The reason for delay must be substantiated with evidences – medical records, etc.
  - Affidavit must be filed.
- **Additional Evidence petition**
  - Separate Application to be made under rule 46A
  - Identify specific clause under of Rule 46A in which the case is pleaded
  - File additional evidences separately and/or Identify evidences in petition

## Written submissions

- Ground wise and start with telling the issue involved and then give brief facts for each issue.
- Prove the case positively with pleading on facts and law together with reference of evidences and highlight vital points in the evidences while referencing them to substantiate relief claimed in the appeal.
- Every Factual assertion should be corroborated with evidence duly referenced.  
(Pagination of written submission and Compile paperbook for evidences - properly bind it – punching/ spiral binding).
- Now Case Laws
- Meet adverse observations of assessing officer and differentiate case laws relied by AO.

- **Section 250 - Procedure in Appeal**

- Section 250(4) – Further inquiry by CIT(A)
- Section 250(5) – Additional ground can be admitted by CIT(A)
- Section 250(6) – Speaking order by CIT(A)
- Section 250(6A) – ‘may’ - time limit for passing order – 1 year from end of financial year in which appeal is filed – recommended limit only.
- Section 250 (6B) – (6D) - **E- Proceedings introduced by FA 2020**

- **Section 251 – Powers of CIT(A)**

- May confirm, reduce, enhance or annul assessment
- May confirm, cancel, enhance or reduce penalty
- In any other case, orders as he deems fit
- Enhancement – after reasonable opportunity of hearing

## Income Tax Appellate Tribunal – Final Fact-Finding Body

- Section 253 – Appeal before Appellate Tribunal - Any Assessee ‘Aggrieved’
- Section 253(1) - Prescribed form – Form 36
- Section 253(3) – Limitation – 60 days from date of service of order.
- Section 253(4) – Cross objection – Form 36A – no appeal fee
- Section 253 (6) – Prescribed Fee

Assessed income	Fee
Less than 1,00,000	500
1,00,000 – 2,00,000	1500
More than 2,00,000	1% of assessed income subject to maximum of Rs. 10,000
Others	500
Stay of Demand	500



**Filing of Income Tax Return**

**View Returns / Forms**

- Income Tax Return
- Income Tax Forms**
- Response to Notice u/s 139(9)
- Upload Form BB (Return of Net Wealth)
- Response to Outstanding Demand
- Rectification

**IMPORTANT !!!**

Introducing 'Service Request' functionality under 'My Account'. Now, you can raise and view the requests for the following.

- Intimation u/s 143(1)/154/16(1)/35
- Refund Re-issue
- Change ITR form Particulars
- Certificate of Appreciation
- Condonation Request



### Income Tax Forms

PAN *	<input type="text" value="REDACTED"/>
Form Name *	FORM NO.35 - Appeal ▼
Submission Mode *	Prepare and Submit Or ▼
<input type="button" value="Continue"/> <input type="button" value="Cancel"/>	

#### Instructions

- ♦ Fields marked with asterisk(\*) are mandatory





Income Tax Forms

PAN \* [Redacted]

Form Name \* FORM NO.35 - Appeal

Submission M

Instructions

- Fields marked with asterisk(\*) are mandatory

**Select CIT(A)**

Please select the relevant CIT(A) from the drop down. CIT (A), Delhi- 18

Please check the checkbox if CIT(A) you wish to appeal is not present in drop down

Continue Cancel



### FORM NO. 35

[See rule 45]

#### Appeal to the Commissioner of Income-tax (Appeals)

Preview and Submit  Save Draft  Exit



Instructions **Form 35** Verification

#### Personal Information

First Name [Redacted]	Middle Name [ ]	Last Name or Name of Entity* [Redacted]	PAN* [Redacted]
Flat/ Door/Block No * [Redacted]		Name of Premises / Building / Village [ ]	TAN (if available) [ ]
Area/ Locality * [Redacted]	Town/ City/ District * [Redacted]	State * [Redacted]	Road/ Street /Post Office [ ]
Country * [Redacted]	Pincode * [Redacted]	Mobile No * [Redacted]	STD/ISD code [ ]
Phone No. [ ]	Email Address * [Redacted]	Whether notices/ communication may be sent on email?* Select	

#### Order against which Appeal is filed

1 Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant*	Assessment Year	Select	
	Financial Year	Select	
	Block Period	From (AY)	Select
		To (AY)	Select
	Date of Search	[ ]	

		Date of Search	<input type="text"/>
<b>Details of the order appealed against/Appeal u/s 248</b>			
2	a	Section and sub-section of the Income-tax Act,1961*:	Select <input type="text"/>
		Order Number	<input type="text"/>
		Document Identification Number (DIN)	<input type="text"/>
	b	Date of Order	<input type="text"/>
	c	Date of service of Order / Notice of Demand / Date of payment of tax in case of Appeal u/s 248	<input type="text"/>
3	Income-tax Authority passing the order appealed against		WARD 54(1), DELHI <input type="text"/>
<b>Pending Appeal</b>			
4	Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellant with any Commissioner (Appeals) *		Select <input type="text"/>
<b>Appeal Details</b>			
5	Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred *		<input type="text"/>
6	If appeal relates to any assessment ?*		Select <input type="text"/>
a	Amount of Income Assessed (₹)		<input type="text"/>
	b Total Addition to Income (₹)		<input type="text"/>
	c In case of Loss, total disallowance of Loss in assessment (₹)		<input type="text"/>
	d Amount of Addition/ Disallowance of Loss disputed in Appeal (₹)		<input type="text"/>
	e Amount of Disputed Demand (₹)- Enter Nil in case of Loss		<input type="text"/>
7	If appeal relates to penalty ?*		Select <input type="text"/>
a	Amount of penalty as per order (₹)		<input type="text"/>
	b Amount of penalty disputed in Appeal (₹)		<input type="text"/>

Details of Taxes paid

8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full *	Select
9	Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act,1961 has been paid*	Select
10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act,1961 and borne by the deducor, details of tax deposited under section 195(1)	

Statement of facts, Grounds of Appeal and additional evidence

<b>Statement of Facts</b>			
11	Facts of the case in brief (not exceeding 1000 words) *		<input type="text"/>
	List of documentary evidence relied upon		<input type="text"/>
12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A *		Select
12.1	If reply to 12 is Yes, furnish the list of such documentary evidence		
13	Grounds of Appeal(each ground not exceeding 100 words)*		
Sl. No.	Relevant section (s) of IT/Act	Issue	Ground of Appeal
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="+ Add"/> <input type="button" value="X Delete"/>			

Appeal filing details

14	Whether there is delay in filing appeal*	Select
15	If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)	

1

**Appeal filing details**

14 Whether there is delay in filing appeal\*

15 If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)

16 Details of Appeal Fees Paid\*

Sl. No.	BSR Code	Date of payment	Serial Number	Amount
1	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

17. Address to which notices may be sent to the appellant\*

Flat/ Door/Block No *		Name of Premises / Building / Village		Road/ Street /Post Office
Area/ Locality *		Town/ City/ District *	State *	Country *
Pincode *	Mobile No *	Email Address *		

Preview and Submit



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ISO/IEC 20000-1  
Information Technology Service Management

ISO 22301  
Business Continuity Management

ISO/IEC 27001  
Information Security Management



### FORM NO. 35

[See rule 45]

### Appeal to the Commissioner of Income-tax (Appeals)

Preview and Submit  Save Draft  Exit



Instructions Form 35 Verification

#### VERIFICATION

I\*,

[Redacted]

, the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place\* [Redacted]

Date:\* [Redacted]

Preview and Submit  Save Draft  Exit





17. Address to which notices may be sent to the appellant

Flat/ Door/Block No	Name of Premises / Building / Village
Road/ Street /Post Office	Area/ Locality
Town/ City/ District	State
Country	Pincode
Email Address	Mobile No

VERIFICATION | [Edit](#)

I, [Redacted], the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place: [Redacted]  
Date: [Redacted]

Attachments

Notes :  
a) All attachments should be in Pdf or Zip format only. b) All the attachments together should not exceed 50 Mb.

Attachment :			
1	Copy of order appealed against	<input type="button" value="Choose File"/>	Assessment order.pdf 0.7602 MB
2	Notice of demand	<input type="button" value="Choose File"/>	Demand notice.PDF 1.1632 MB
3	Any other attachment	<input type="button" value="Choose File"/>	Grounds of Appeal.pdf 0.7602 MB

Submi  Edit  Exit

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17. Address to which notices may be sent to the appellant

Flat/ Door/Block No	Name of Premises / Building / Village
Road/ Street /Post Office	Area/ Locality
Town/ City/ District	State
Country	Pincode

Email Address

VERIFICATION

I\* evidence other than

Place\*

Date:\*

Attachments

Notes :

a) All attachments

Attachment :

1 Copy of

2 Notice of

3 Any other attachment

Choose File Grounds of Appeal.pdf 0.7602 MB

### Verify Forms

Select one of the options given below by clicking on that option

**Option1 - I already have an EVC to e-Verify.**

**Option2 - I do not have an EVC and I would like to generate EVC to e-Verify**

**Option3 - I would like to use Aadhaar OTP to e-Verify**

**Note : You will not be able to submit your request without a valid EVC or Digital Signature.**

Submi  Edit  Exit

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## Note

- Statement of facts should not exceed 1000 words.
- Grounds of appeal be uploaded as attachment and reference as annexure in the space given or may be filled in brief in the space provided (Ground of appeal should not be of more than 100 words – per column).
- Power of Attorney of Counsel/ any person authorized to represent. Also, if appeal is signed by any person authorized by assessee, power of attorney of Authorized representative must be enclosed with the appeal.
- Scanned copies of order appealed against. [Attachments should be in pdf / zip format.(it should not exceed 50MB in size)]

# *Thank You*

**CA SOMIL AGARWAL**

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