

# Appeals & Procedures for Filing Appeals



**Income Tax Department**

[www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)



@IncomeTaxIndia

**2018**

**Tax Payers Information Series-42**

# **Appeals & Procedures for Filing Appeals**



**INCOME TAX DEPARTMENT**

Directorate of Income Tax (PR,P&P)

6th Floor, Mayur Bhawan,

Connaught Circus,

New Delhi-110001

### **DISCLAIMER:**

The purpose of this booklet is to inform the taxpayers about the broad outline of the appellate mechanism under the Income Tax, Act, 1961 and to help them understand how to file an appeal against an order of an income tax authority. It, however, does not have any statutory authority and cannot be cited in a Court of Law. In case of any doubt, taxpayers are advised to make reference to the relevant statutory provisions, as laid down in the Income Tax Act, 1961, Income tax Rules, 1962 and circulars/ instructions issued by the CBDT from time to time and the web-site <https://www.incometaxindia.gov.in>. For e-filing of appeals, reference may be made to <https://www.incometaxindiaefiling.gov.in>.

# PREFACE

It has been a continuous endeavor of the Income Tax department to provide quality taxpayer services. This booklet under the “Tax Payer Information Series” is an attempt to make taxpayers aware about the provisions of the Income-tax Act 1961 relating to **“Appeals and Procedure of Filing Appeals”** and present procedures, which is of immense importance now, as more and more people join the tax net every year. The booklet would be a guide to taxpayers who may contest the orders passed by the Income Tax authorities.

The Income tax Department is a front-runner in use of Information Technology in its core procedures. Recently, the department has introduced an e-filing facility for filing of appeal at the first appellate level i.e. the Commissioner of Income-tax(Appeals). This booklet explains the e-filing facility in simple user-friendly steps and puts forth in simple language, the relevant provisions and procedures under the Income-tax Act relating to filing of appeal before various Appellate Authorities.

Dr. Dheeraj Bhatnagar, IRS, presently, Joint Secretary, Department of Investment & Public Assets Management, Ministry of Finance, New Delhi has very painstakingly re-written the booklet, by incorporating the e-filing procedure through the Income Tax Business Applications module introduced recently and by updating the content in view of the present provisions of the Law. Shri Anurag Sharma, Deputy Director of Income tax (Systems) has vetted the e-filing provisions. I thank them both for their efforts.

It is my earnest hope that this booklet will help taxpayers in filing appeals easily and at a low cost of money and time.

It is requested that your valuable suggestions for further improvement of the booklet may kindly be emailed at [delhi.ddit.pr@incometax.gov.in](mailto:delhi.ddit.pr@incometax.gov.in) / [delhi.dit.prppol@incometax.gov.in](mailto:delhi.dit.prppol@incometax.gov.in).



(Debjyoti Das)

New Delhi  
Date : August, 2018

Addl. Director General (PR, P&P)  
Central Board of Direct Taxes

# TABLE OF CONTENTS

	Page Number
Introduction	1
I. First level of appeal- Commissioner of Income Tax (appeals)	5
2. Orders which can be appealed against before the CIT(Appeals)	5
3. Form of appeal	8
4. Who can sign and verify form no. 35	9
5. Documents to be submitted along with form number 35(in duplicate)	11
6. Payment of accepted tax liability must before be filing appeal:	11
7. Appeal fees:	11

8.	Whether full amount of tax and interest as determined by the assessing officer has to be paid before filing the appeal	12
9.	Time period within which appeal can be filed before CIT(Appeals)	13
10.	Appeal filing procedure:	13
E-filing of appeal before the CIT(Appeals)		
11.	Appeal procedure in the office of CIT(appels) following receipt of appeal:	17
	Filing of additional evidence:	19
12.	Scope of appeal order and powers of commissioner of income tax (appeals):	21
13.	Dispute resolution panel: an alternative dispute resolution mechanism:	22
II.	Second level of appeal- Income Tax Appellate Tribunal	23

2.	Orders against which appeal can be filed before appellate tribunal:	23
3.	Time limit for filing appeal before ITAT	26
4.	Form of appeal	26
5.	Check list of documents to be filed	26
6.	Who can sign form no.36 or 36B	27
7.	Fees to be paid by the taxpayer for filing appeal before the ITAT	28
8.	Memorandum of cross objections	29
9.	Language to be used for filling in form no. 36/36A	30
10.	Who is authorized to receive the appeal in ITAT	30
11.	Condonation of delay in filing appeal/ memorandum of objections	30
12.	Procedure followed in the ITAT	31



13	Orders of the ITAT	33
14.	Miscellaneous applications	34
15.	Stay petition	34
III.	Third level of appeal-appeal before High Court	34
IV.	Appeal before Supreme Court	35
	Annexure-1	36
	Form no. 35	
	Annexure-2	42
	Form no.36	
	Annexure-3	45
	Form no. 36a	
	standing order under Income- Tax (Appellate Tribunal) Rules, 1963	47
	Annexure-5	55
	ITAT guidelines	

# **1. INTRODUCTION**

The Indian direct tax system provides the taxpayers a right to grievance redressal in respect of certain specified orders of income tax authorities by providing a multi-layered appellate mechanism. The appeal mechanism is cost-effective with negligible amount of appeal fee involved. With the introduction of e-filing facility at the first appellate level, filing of appeal by taxpayers has become much easier for the taxpayers. Taxpayers can follow the progress of their appeals through websites of ITAT, High Courts and the Supreme Court, which display cause lists and provide portal for ascertaining status of appeals.

The right to appeal under the income tax law is limited to certain orders passed by the Income tax authorities specified in the Income Tax Act, 1961. Income tax authorities responsible for making assessment of income of taxpayers are termed as “Assessing officers”. Besides, certain income tax authorities are responsible for verifying whether a person while making certain specified payment in the nature of interest, commission, etc. to another person, has deducted correct amount of tax and deposited it in Government account or not. These income tax authorities are required to give their findings by passing written orders. Administratively, these assessing officers work under the administrative control of Principal Commissioners of Income tax/ Commissioner of Income tax (Administration).

A tax payer aggrieved by any of the orders passed by the Income tax authorities, which are specified as ‘appealable orders’ in the Income Tax Act, 1961, has a right to file an appeal before the Commissioner of Income Tax (Appeals), having jurisdiction over the taxpayer. CIT(Appeals) is the first level of appellate authority, comprising a single-member authority. CIT (Appeals) positions are manned by officers from the Indian Revenue Service and are under the administrative control of the Central Board of Direct taxes. However, functionally, they are independent in their decision-making and for that purpose are bound to follow law position on various issues, as interpreted by higher judiciary. CIT(Appeals) decide the appeal by passing a written order, after hearing the taxpayer (called “appellant”), by which the orders of the Assessing officer can be confirmed, modified or annulled, which may have the effect of reduction, deletion or enhancement of the quantum of demand raised by the assessing officer.

An order of the CIT(Appeals) can be appealed against, by either of the two parties, namely, the taxpayer or the Income tax department, before the Income Tax Appellate Tribunal (called as “ITAT”), which is the second level appellate authority. ITAT is a multi-member body comprising of judicial and accountant members, independently appointed by the Ministry of law. Typically, an ITAT bench comprises of two members. An ITAT bench decides an appeal, on hearing the authorized representatives of the taxpayer and the Income Tax department, by passing a written order, by which it can confirm, partly confirm or

annul the order of the CIT(Appeals) and thereby can delete or reduce the quantum of demand, however, ITAT cannot enhance the demand. Importantly, ITAT is the final fact-finding authority.

Income Tax appeals against the orders passed by ITAT can be filed by either of the parties before the respective High Courts of judicature (the third level of appellate authority). However, generally, an appeal before a High Court is admitted only if it involves a substantial question of law. Supreme Court, which lays down final interpretation of law on an issue, can be approached by either of the parties against the order of a High Courts, albeit again, only on a question of law.

Besides the above appellate mechanism, an Alternative Dispute Resolution mechanism in the form of the Income Tax Settlement Commission is available, which can be approached by a taxpayer before an assessment order is passed by the Assessing officer, subject to meeting certain conditions. Further, A foreign company or any taxpayer intending to enter into an international transaction, may approach the Authority for Advance Ruling(AAR) for obtaining final ruling on an issue, before the dispute arises.

Functional independence and objective decision-making is an important hallmark of the Income tax appellate mechanism. Both ITAT and the CIT(Appeals), despite being under the administrative control of Ministry of law

and the Ministry of Finance, respectively, are governed by the principle of judicial hierarchy. All appellate authorities are bound by the decision of the Supreme Court on a question of law. In the absence of a contrary decision of Supreme Court, the jurisdictional ITAT and the CIT(Appeals) are bound by the decision of the High Court of judicature. In the absence of any decision of the High Court of judicature in respect of an ITAT bench and corresponding CIT(Appeals), the decision of any High Court on a question of law would have binding precedence. On identical facts, CIT(Appeals) in a jurisdiction are bound by the decision of the jurisdictional ITAT, provided there is no contrary decision of Supreme Court or of any of the High Courts.

Taxpayers not only have a right to appeal and get a decision in independent and objective manner, but also have a right to get prompt effect by the Income tax authorities to the outcome of an appeal order. The Citizen's Charter of the Income Tax Department lays down service delivery standards of highest standard, by which Income tax authorities are committed to give effect to the appeal order and issue refund to the taxpayer within one month. If the income tax authorities fail to give effect to the appeal order, taxpayers can approach public grievance officers, details of whom are available on the income tax department's website. Such grievances are to be redressed within 2 months.

# **I. FIRST LEVEL OF APPEAL - COMMISSIONER OF INCOME TAX (APPEALS)**

1. Taxpayers can file appeal against the orders of assessing officer before the CIT(A), having, jurisdiction over the taxpayer. Appeal before a CIT(A) can be filed only in the prescribed form number 35 and is to be accompanied by the proof of payment of prescribed appeal fee and original copy of the notice of demand issued by the assessing officer under section 156 and a copy of the order. For taxpayers who are required to e-file the income tax return, e-appeal is to be mandatorily filed through [www.incometaxefiling.gov.in](http://www.incometaxefiling.gov.in). The details of CIT(Appeals), before whom appeal can be filed by the aggrieved taxpayer can be found out in the notice of demand issued by the Assessing Officer under section 156.

## **2. ORDERS WHICH CAN BE APPEALED AGAINST BEFORE THE CIT(A)**

Taxpayers can file appeal before a CIT(Appeals) against the following orders passed by various Income tax authorities:

- (a) An order passed against the taxpayer in a case where the taxpayer denies the liability to be assessed under Income Tax Act;

- (b) An Intimation issued under section 143(1)/ (1B), where adjustments have been made in income offered to tax in the return of income;
- (c) An Intimation issued under section 200A(1) where adjustments are made in the filed statement;
- (d) An Assessment order passed under section 143(3) except in case of an order passed in pursuance of directions of the Dispute Resolution Panel;
- (e) An assessment order passed under section 144;
- (f) An order of Assessment, Re-assessment or Re-computation passed after reopening the assessment under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel;
- (g) An order referred to in section 150;
- (h) An order of assessment or reassessment passed under section 153A or under section 158BC in case of search/seizure;
- (i) An Assessment or reassessment order passed under section 92CD (3);
- (j) A Rectification order passed under section 154 or under section 155;

- (k) An order passed under section 163 treating the taxpayer as agent of non-resident;
- (l) An Order passed under section 170(2)/(3) assessing the successor of the business in respect of income earned by the predecessor;
- (m) An order passed under section 171 recording the finding about partition of a Hindu Undivided Family. · An order passed by Joint Commissioner under section 115VP (3) refusing approval to opt for tonnage-tax scheme to qualifying shipping companies;
- (n) An order passed under section 201(1)/ 206C(6A) deeming person responsible for deduction of tax at source as assessee-in-default due to failure to deduct tax at source or to collect tax at source or to pay the same to the credit of the Government;
- (o) An order determining refund passed under section 237;
- (p) An order imposing penalty under section(s) 221/ or 271 or 271A or 271AAA or 271F or 271FB or 272A or 272AA or 272B or 272BB or 275(1A) or 158BFA (2) or 271B or 271BB or 271C or 271CA or 271D or 271E or 271AAB;
- (q) An order imposing a penalty under Chapter XXI.



### **3. FORM OF APPEAL**

Appeal before the CIT(Appeals) is to be filed in prescribed Form number 35, in duplicate. This form is to be used for e-filing of appeal as well.

- ✓ This form captures certain basic details such as Name and Address of the aggrieved taxpayer, Permanent Account Number (PAN), assessment year, returned income, assessed income, are to be filled in. It also requires the appellant to furnish the address at which notice under section 250 is to be served for conducting the appellate proceedings.
- ✓ The column titled “Relief claimed in appeal”, requires taxpayers to indicate the amount of reductions sought in income or any other specific relief sought in appeal.
- ✓ In the column “Statement of Facts”, relevant facts in respect of each subject matter of appeal are to be briefly mentioned. In addition, nature of business or profession, if the account books are maintained or not, may also be mentioned against this column.
- ✓ In the column “Grounds of appeal”, each specific point on which relief is being sought in appeal, are to be separately mentioned in the narrative form. Each such specific point is to be presented

as a separate Ground of appeal. The grounds of appeal can challenge the action of the Income tax authority on a question of law or on a question of fact. For example, in an appeal against addition to the returned income by applying a gross profit rate on estimated turnover, the appellant may present the ground of appeal as under:

*“The Ld. Assessing Officer was not justified in rejecting the results as per regular books of account and in estimating the income by applying an ad-hoc rate of gross profit.”*

#### **4. WHO CAN SIGN AND VERIFY FORM NO. 35?**

The form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorized to sign the return of income under section 140 as applicable to the taxpayer. In other words, form of appeal is to be signed and verified by following:

- (1) In case of appeal by an 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 foreign company, by a person who holds a valid power of attorney from such company.
- (5) 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) .
- (6) 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.
- (7) In case of a Local Authority, by the Principal Officer thereof.
- (8) In case of a Political Party, by the Chief Executive Officer of such party.
- (9) In case of any other Association, by the Principal Officer thereof or by any member of the Association.

If the form number 35 has not been signed by the person having authority to do so, the appeal is liable to be rejected. However, the taxpayer can file the appeal again within the prescribed period after removing the defect.

**5. DOCUMENTS TO BE SUBMITTED ALONG WITH FORM NUMBER 35(IN DUPLICATE)**

- (A) One certified copy of order, appealed against.
- (B) Notice of demand in original. ·
- (C) Copy of challans of fees (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 appeal.

**6. PAYMENT OF ACCEPTED TAX LIABILITY MUST BEFORE FILING APPEAL:**

An appeal will be admitted by Commissioner (Appeals) only, if tax as per the returned income has been paid prior to filing of appeal. Where return of income has not been filed, the appeal can only be admitted only if advance tax payable has been paid. In the latter situation, i.e. where no return of income has been filed, tax payer can apply to the Commissioner (Appeals) for exemption from such condition for good and sufficient reasons.

**7. APPEAL FEES:**

An appeal filed without evidence of payment of requisite amount of appeal fee can be rejected at admission stage itself. The quantum of fees to be paid for filing appeal before the Commissioner (Appeals) varies according to

the total income determined by the Assessing Officer as under:

<b>S I No.</b>	<b>Total Income determined by the Assessing Officer</b>	<b>Appeal Fee</b>
1.	Less than Rs. 1,00,000/-	Rs. 250/-
2.	More than Rs.1,00,000/- but less than Rs.2,00,000/-	Rs. 500/-
3.	More than Rs. 2,00,000/-	Rs. 1,000/-

Where the subject matter of appeal relates to any other matter, fee of Rs. 250/- is to be paid. Appeal fee can be paid in any branch of authorised bank/ State Bank of India/Reserve bank of India along-with challan. E-payment can also be made on [www.itba.gov.in](http://www.itba.gov.in).

#### **8. WHETHER FULL AMOUNT OF TAX AND INTEREST AS DETERMINED BY THE ASSESSING OFFICER HAS TO BE PAID BEFORE FILING THE APPEAL**

The appeal is not liable to be rejected if full amount of tax and interest determined by the assessing officer has not been paid by the taxpayer. However, Liability of the taxpayer to pay interest under section 220 on the amount of demand payable as specified in the notice of

demand will be valid up to the disposal of appeal by the last appellate authority. Further, filing of appeal itself does not stop the assessing officer from making recovery of demand, unless specifically stayed by an Income tax authority on the request of the taxpayer.

## **9. TIME PERIOD WITHIN WHICH APPEAL CAN BE FILED BEFORE COMMISSIONER (APPEALS)**

Appeal before a CIT(A) is to be filed within 30 days of the date of service of notice of demand relating to assessment or penalty order or within 30 days of the date of service of any other order sought to be appealed against, as the case may be. The Commissioner (Appeals) may however, condone the delay and admit an appeal filed after the expiration of period of 30 days, if he is satisfied that there was sufficient cause for not presenting the appeal within the prescribed time. For this purpose, an Application for condoning the delay citing reasons for the delay along with necessary evidences should be filed with Form No. 35 at the time of filing of appeal.

## **10. APPEAL FILING PROCEDURE:**

### **E-FILING OF APPEAL BEFORE THE CIT(A):**

All taxpayers who are required to e-file the Income Tax Return(ITR) as per Rule 12 of the Income Tax Rules are also mandatorily required to e-file appeal in accordance with Rule 45, using the Form 35 available on the e-filing

portal of the Income Tax Department. Moreover, other taxpayers may also e- file appeal, if they wish to. But they continue to retain the option to file Form 35 in paper form as well.

The steps for filling up Form 35 and its verification are as follows:

- For e-filing the appeal, taxpayer has to first Login at the e-Filing Portal at <https://incometaxindiaefiling.gov.in>.
- After log in, Click on “e-File” on the Menu Bar and Select option “Prepare and Submit Online Form (Other than ITR)”. From the drop -down box, one has to select the Form 35 and click “Continue”.
- Select CIT(A). By default , the name of CIT(A) would appear. In case, the option displayed is not correct, then User can change and then click on Continue to open Form No. 35.
- Please click on the Instructions Tab and read the instructions for filling the Form 35.
  - Fields marked with asterisk (\*) are mandatory.
  - While entering the data in online form, please do not click BACK button in browser or press BACKSPACE button. You will be logged out.

- All amounts are in Indian Rupees.
  - A calendar is provided for selecting the date field (format DD/MM/YY).
  - All greyed out fields are either auto-filled or non-editable.
  - In Forms wherever information is captured in tables, to Add new Row Click on Add button and enter values in the field provided. Similarly, to Delete Row click Delete button.
- For TDS-related disputes, log in with TAN on the e-filing website, to e-file appeal.
  - In case of an appeal against block assessment order, the user has to enter the First Year of Block in Assessment Year column. E.g., Block Year 2002-03 to 2011-12, then enter AY as 2002-03. The system would read it as appeal for the block period, if section 158 BC or 158 BD are mentioned in the order section column.
  - The word limits provided in Form No 35 in respect of various columns are to be strictly followed.
  - The size of the documents to be attached, i.e., the scanned copy of assessment order, demand notice, appeal fee challan or any other document relied upon in appeal. However, the size of the file attached should not exceed 50 Mb.



- Once the Form is filled, click on “Preview and Submit”.
- After the successful submission of the form, screen will be displayed asking if the taxpayer has a DSC registered in the profile. In such a case, attach the signature file generated using DSC Management Utility and click “Submit”. However, if the taxpayer does not have a DSC registered in the profile, then another screen will be displayed, suggesting three options as under:

Option 1: I already have an EVC to e-verify the form.

Option 2: I do not have an EVC but would like to generate EVC to e-verify the form.

Option 3: I would like to generate Aadhar OTP to e-verify the form.

Form No 35 can be verified using any of the above options.

- Upon the successful submission of the form, transaction id is generated and the confirmation mail is sent to the registered email id, as an Acknowledgement for having filed e-appeal.

**11. APPEAL PROCEDURE IN THE OFFICE OF CIT(APPEALS) FOLLOWING RECEIPT OF APPEAL:**

(i) On receipt of Form no. 35, the office of the Commissioner of Income-tax (Appeals) examines the appeal documents and the evidence of payment of appeal fee, etc. The appeal is liable to be rejected, if the form number 35 has not been signed by an authorized person or the appeal has been filed beyond the period of 30 days from the receipt of order appealed against and for which no request for condonation of delay was made, or the evidence of payment of prescribed amount of appeal fee has not been filed. The Commissioner of Income tax (appeals) may issue a letter pointing out the above defects and if no satisfactory reply is received in the time given in the letter, may reject the appeal.

(ii) Where the appeal has been admitted, the commissioner of Income tax (Appeals) will send a copy of the appeal memo to the concerned assessing officer and forward therewith a copy of the Grounds of appeal and statement of facts. The assessing officer can send a written rejoinder to the Commissioner (Appeals) and respond on the SOF and grounds of appeal before the scheduled hearing before the Commissioner (Appeals).

(iii) The Commissioner of Income tax (appeals) decides the date and place for hearing the appeal by

issuing notice to the tax payer. A copy of the notice is also sent to the Assessing Officer, against whose order appeal is preferred or to whom the jurisdiction over the appellant has been later got transferred. The scheduling of hearings by the Commissioner (Appeals) is to be made in accordance with the CBDT's annual policy for litigation management, which gives differential priority to different categories of appeals. E.g., High demand appeals (involving demand above Rupees Ten lakhs or assessments involving addition of over Rs Fifty lakhs), which are carried forward for more than 12 months as on the 1<sup>st</sup> April of the current year are given highest priority.

(iv) During the hearing before the CIT(Appeals), the tax payer has a right to be heard either personally or through an Authorized Representative. However, where an authorized representative is to appear before the CIT(Appeals), a written authorization duly signed by the authorized signatory on a stamp paper is to be produced before the CIT(Appeals), at the time of hearing. Before the hearing, the Commissioner (Appeals) will also issue a copy of the notice to the assessing officer and allow him to represent the income tax department and respond on the SOF or grounds of appeal or further written or oral submissions filed by the taxpayer during the hearings. On the request of the appellant, the CIT(Appeals) may also allow the tax payer to file additional grounds of appeal, i.e. grounds not specified in the Form no. 35, after satisfying himself that omission of those grounds from the form of appeal was not willful or unreasonable.

(v) Before disposing of any appeal, Commissioner (Appeals) may carry out further enquiry himself or through the Assessing Officer. If such proceedings are conducted through the Assessing officer, the same are generally referred to as remand proceedings. However, the CIT(Appeals) is bound to provide a copy of the evidences gathered by him or by the AO on his directions during the course of appeal proceedings and allow the taxpayer an opportunity of being heard by filing a rejoinder or where the evidence is in the nature of a statement of a third party recorded under section 131, to allow him an opportunity to cross-examine such third party.

#### **FILING OF ADDITIONAL EVIDENCE:**

(vi) During the appeal proceedings, the tax payer is not entitled to produce any evidence, whether oral or documentary other than what was already produced before the Assessing Officer. However, in certain circumstances specified in Rule 46A, Commissioner (Appeals) may allow admission of additional evidences. For this purpose, the appellant taxpayer is required to make a specific written request pleading the CIT(Appeals) to admit certain specific additional evidences and explain the circumstances under which such evidences could not be filed before the AO. In particular, the taxpayer has to identify the specific circumstances mentioned in Rule 46A below under which such default falls:

1. where the Assessing Officer has refused to admit evidence, which ought to have been admitted; or
2. where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to be produced by the Assessing Officer; or
3. where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or
4. where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Before taking into account the additional evidence filed, Commissioner (Appeals) is required to provide a copy of the appellant's application for admission of additional evidence and a copy of the additional evidences to provide a reasonable opportunity to the Assessing Officer to comment whether such additional evidences can be admitted or not. The assessing officer is given a specific time frame to file a remand report in this regard. If the AO objects to admission of additional evidence, a copy of the remand report is provided to the taxpayer for providing opportunity to file a rejoinder thereon within a specific time-frame. On examination of the remand report and the rejoinder, the Commissioner (Appeals) decides

whether to admit the same or not after recording reasons in writing in this regard. The decision of CIT(appeals) may be conveyed through a separate written order or could be part of the final appellate order.

(vii) During the appellate proceeding, when the CIT (Appeals) concludes the hearing, he has to record the date on the note-sheet with the remarks- 'Case heard'. After this, the Commissioner (Appeals) passes an appeal order under section 250, which is to be in writing, by which he disposes of each ground of the appeal with reasons, either separately or after clubbing grounds with similar implications together. The order of the CIT(Appeals) is served at the address of the appellant as given in Form number 35 or at a more recent address. In case of a-filed appeals, CIT(appeals) can issue order on the e-mail ID given in the form number 35. A copy of the order is provided to the concerned assessing officer and also to the concerned Principal Commissioner of Income tax/Commissioner of Income tax (Administration) having control over the assessing officer. The appeal order is served as per the principles of service of a notice as per the Civil Procedure Code (CPC).

## **12. SCOPE OF APPEAL ORDER AND POWERS OF COMMISSIONER OF INCOME TAX (APPEALS):**

In case of assessment and penalty, Commissioner (Appeals) may confirm, reduce, annul or enhance

it. Before enhancing any assessment or penalty, CIT(Appeals) has to provide reasonable opportunity to the tax payer by issuing show cause notice proposing such enhancement. While disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which order appealed against was passed, even if such matter was not raised by the tax payer.

The Commissioner of Income Tax (Appeals) in the case of an assessment order may either confirm, reduce or enhance the demand or annul the order that is passed without jurisdiction and the defect is not curable.

In the case of order of penalty, CIT(Appeals) may either confirm or cancel the order of penalty and may enhance or reduce the quantum of penalty levied.

### **13. DISPUTE RESOLUTION PANEL: AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM:**

There is an alternative dispute resolution mechanism for foreign companies or cases involving transfer pricing adjustments or international taxation matters, in the form of a Dispute Resolution Panel(DRP), to which an application can be filed by the taxpayer on receipt of a draft assessment order. The DRP is required to decide the application in a time bound manner within 12 months of receipt of the application. The assessing officer can

pass the final order only based on the DRP's order. The order of DRP can also be challenged before the ITAT by either side.

## **II. SECOND LEVEL OF APPEAL- INCOME TAX APPELLATE TRIBUNAL**

1. Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). 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 administrative control of the Ministry of Law. ITAT consists of two classes of members – Judicial and Accountant. At present, ITAT has 63 Benches located at 27 different stations covering almost all the cities, which have a seat of the High Courts. The jurisdiction of respective Benches of ITAT is defined as per the Standing Order under the Income-Tax (Appellate Tribunal) Rules, 1963 (Annexure 4).

### **2. ORDERS AGAINST WHICH APPEAL CAN BE FILED BEFORE ITAT:**

Any Tax payer can file appeal before the Income Tax Appellate Tribunal against the following orders:

- (i) an order passed by a Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A or section 272A;  
or



- (ii) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, initiated after the 30th day of June, 1995, but before the 1st day of January, 1997; or
- (iii) an Order by Assessing Officer u/ s 115 VZC excluding the tax payer from tonnage tax scheme; or an order passed by a Principal Commissioner or a Commissioner under section 12AA on an application for registration filed by a charitable or religious trust; or
- (iv) an order passed by a Principal Commissioner or a Commissioner under Section 80G(5)(vi) regarding approval of a charitable trust for donations made after 31.3.92; or
- (v) an order passed by a Principal Commissioner or a Commissioner under section 263 revising an Assessing Officer's order, which is considered prejudicial to the interest of revenue or an order under section 154 amending the order under section 263; or
- (vi) an order passed by a Principal Commissioner or a Commissioner under section 270A or under section 271 ; or

- (vii) an order passed by a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 272A; or
- (viii) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 for rectification of such order;
- (ix) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Principal Commissioner or Commissioner, as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 rectifying such order; or
- (x) an order passed by the prescribed authority under sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, which relates to filing of application by an educational institute or a 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.

### **3. TIME LIMIT FOR FILING APPEAL BEFORE ITAT:**

Appeal before the ITAT is to be filed within 60 days of the date on which order appealed against is communicated to the taxpayer or the Commissioner, as the case may be. However, 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.

### **4. FORM OF APPEAL**

An appeal to ITAT shall be filed in Form No. 36. An appeal against the order of the DRP is to be made in Form No. 36B (Annexure-2).

### **5. CHECK LIST OF DOCUMENTS TO BE FILED**

The following documents should be filed in all cases:

- Form No. 36 (in triplicate);
- The Order appealed against (2 copies, including one certified copy);
- The Order of the Assessing Officer (2 copies);
- The Grounds of appeal taken before the Commissioner of Income-Tax (Appeals)(2 copies);
- The Statement of facts filed before the Commissioner of Income-Tax (Appeals) (2 copies); and

- A copy of challan for payment of fee.

In addition, in the following cases, additional documents, as under are to be filed:

- In case of appeal against penalty order, relevant assessment order ((2 copies).
- In case of appeal against an order under section 143(3), read with section 144A, directions of the Joint Commissioner issued under section 144A(2 copies).
- In case of appeal against an order of reassessment passed order under section 147, original assessment order under section 143(3), if any passed (2 copies), and

## **6. WHO CAN SIGN FORM NO.36 OR 36B?**

The form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorized to sign the return of income under section 140, as under:

- (i) 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.
- (ii) 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.

- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) In case of a Local Authority, by the Principal Officer thereof.
- (vii) In case of a Political Party, by the Chief Executive Officer of such party.
- (viii) In case of any other Association, by the Principal Officer thereof or by any member of the Association.

**7. FEES TO BE PAID BY THE TAXPAYER FOR FILING APPEAL BEFORE THE ITAT:**

Form No. 36/ 36B is to be accompanied with fee as under, which depends upon total income computed by the Assessing Officer in the case to which appeal relates.

	Total Income as computed by Assessing Officer	Fees
(i)	Less than Rs.1 lakh	Rs. 500
(ii)	More than Rs. 1 lakh but less than Rs. 2 lakh	Rs. 1,500
(iii)	More than Rs. 2 lakh	1% income, subject to maximum of Rs.10,000

Where the subject matter of appeal relates to any other matter, fee of Rs 500/- is to be paid. An application for stay of demand is to be accompanied by fee of Rs. 500.

## **8. MEMORANDUM OF CROSS OBJECTIONS:**

On filing of the appeal to the ITAT by the taxpayer or by the Assessing Officer, the opposite party will be intimated about the filing of appeal and given an opportunity to file a memorandum of cross objection with the ITAT, 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. A person, who is competent to sign the Form 36 (i.e., form of appeal), can only sign and verify the memorandum of cross objections. The ITAT will dispose of the memorandum of cross objections like an appeal.

**9. LANGUAGE TO BE USED FOR FILLING IN FORM NO. 36/36A:**

The documents for filing appeal/cross objections before the ITAT are to be in English language. However, appeal documents can be drawn up in Hindi also in the Ahmedabad, Mumbai, Nagpur, Allahabad, Amritsar, Chandigarh, Delhi, Indore, Jabalpur, Jaipur and Patna Benches of the Tribunal (Notification No. F. 186-Ad(AT)/71 dated 5.3.74).

**10. WHO IS AUTHORISED TO RECEIVE THE APPEAL IN ITAT:**

An Appeal before the ITAT is to be filed with the Assistant Registrar or the Superintendent/ Assistant Superintendent/Clerk in the ITAT.

**11. CONDONATION OF DELAY IN FILING APPEAL/ MEMORANDUM OF OBJECTIONS:**

The Appellate Tribunal may admit an appeal or permit filing of memorandum of cross objections after the period of 60 days or 30 days, as the case may be, if it is satisfied that there was sufficient cause for not presenting it within the prescribed time.

## **12. PROCEDURE FOLLOWED IN THE ITAT:**

### **FILING OF PAPER BOOK**

The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before. The Bench may in appropriate cases condone the delay and admit the paper book. The Tribunal can also, on its own direct 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. Each paper in the paper book is to be certified as true copy by the party filing the same. Additional evidence, if any, should not be part of the paper book and it should be filed separately.

### **HEARING**

The Appellate Tribunal fixes the date for hearing the appeal and notifies the parties specifying date and place of hearing of the appeal. A copy of memorandum of appeal is sent to the respondent either before or along with such notice. The appeal is heard on the date fixed and on other



dates to which it may be adjourned. If the appellant does not appear in person or through an authorized representative when appeal is called on for hearing, the ITAT may dispose of the appeal on merits after hearing the respondent. However, where after disposal of appeal ex parte, the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for non-appearance, the Tribunal can set aside the ex parte order and restore the appeal. Similar procedure is applicable where appeal is disposed in the absence of respondent.

### **FILING OF ADDITIONAL EVIDENCE**

The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal. 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.

### **PROCEEDINGS BEFORE THE ITAT TO BE OPEN TO PUBLIC**

Normally the proceedings in the Tribunal are public except in cases decided to be otherwise by the Tribunal as per its discretion.

## **13      ORDERS OF THE ITAT**

Normally 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. 5 lakh may be disposed of by a single member Bench. The Bench normally pronounces its orders in Court. Where the orders are not pronounced in the Court, list of such orders showing results of appeal and signed by members is put on the notice board of the Bench.

If the members of a Bench differ in opinion on any point, decision is by 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 to one or more of other members of the ITAT. Such points are decided according to opinion of majority of the members of ITAT, who heard the case, including those who first heard it.

On certain issues, which involve different interpretation by different branches of ITAT, the President of ITAT is empowered to constitute a Special Bench consisting of three or more members, one of whom is necessarily to be a judicial member and one an accountant member.

## **14. MISCELLANEOUS APPLICATIONS**

The ITAT, at any time within four years from the date of order passed by it, can rectify any mistake apparent from record, if the same is brought to its notice by the tax payer or the Assessing Officer. Fee of Rs 50/- is to be paid for filing miscellaneous application.

## **15. STAY PETITION**

On application by the tax payer, the Appellate Tribunal can pass an order of stay of demand in any proceedings relating to an appeal filed before the Appellate Tribunal. The stay can be for a period up to 180 days, and the Appellate Tribunal is expected to dispose of the appeal within the period of stay. Where the appeal is not disposed of within the period of stay, the Appellate Tribunal may grant further stay; however, the total stay period cannot exceed 365 days.

*The Appellate Tribunal has, vide F. No. 114-Ad(AT)/69, dated 13-4-1970, laid down guidelines for the assesses and their representatives as in Annexure-5.*

## **III. THIRD LEVEL OF APPEAL-APPEAL BEFORE HIGH COURT**

Appeal against Appellate Tribunal's order lies with the High Court, Where the High Court is satisfied that the case involves a substantial question of law. Appeal to the High Court against Appellate Tribunal's order can

be filed by the tax payer or the Chief Commissioner/ Commissioner within 120 days of receipt of the order and in the form of memorandum of appeal, precisely stating the substantial question of law involved. If the High Court is satisfied that a substantial question is involved, it would formulate that question. High Court hears the appeal only on the question of law so formulated; however, the respondents can argue at the time of hearing that case does not involve such question of law. Appeal filed before High Court is heard by bench of not less than two Judges and decision is by majority.

#### **IV. APPEAL BEFORE SUPREME COURT**

Appeal against High Court's order in respect of Appellate Tribunal's order lies with the Supreme Court in those cases, which are certified to be fit one for appeal to the Supreme Court. Special leave can also be granted by the Supreme Court under Art. 136 of the constitution of India against the order of the High Court.

\*\*\*\*\*

# ANNEXURE-1

## FORM NO. 35

(See rule 45)

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

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

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		
2	Details of the order appealed against		
		a	Section and sub-section of the Income-tax Act, 1961
		b	Date of Order
3	Income-tax Authority passing the order appealed against	c	Date of service of Order / Notice of Demand
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)		Yes/ No
Pending Appeal	4.1	If reply to 4 is Yes, then give following details. -	
	a	Commissioner (Appeals), with whom the appeal is pending	
	b	Appeal No. and date of filing of appeal	
	c	Assessment year/ financial year in connection with which the appeal has been preferred	
	d	Income-tax Authority passing the order appealed against	
	e	Section and sub-section of the Income-tax Act, 1961, under which the order appealed against has been passed	
	f	Date of such Order	

Appeal Details		5	Section and sub-section of the Income-tax Act, 1961 under which the appeal is preferred	
6			If appeal relates to any assessment	
		a	Amount of Income Assessed (in Rs.)	
		b	Total Addition to Income (in Rs.)	
		c	In case of Loss, total disallowance of Loss in assessment (in Rs.)	
		d	Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.)	
7		e	Amount of Disputed Demand (in Rs.) – Enter Nil in case of Loss	
		If appeal relates to penalty:		
		a	Amount of penalty as per Order (in Rs.)	
		b	Amount of penalty disputed in Appeal (in Rs.)	

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			Yes/No/ Not Applicable
8.1	If reply to 8 is Yes, then enter details of return and taxes paid			
	a	Acknowledgement number		
	b	Date of filing		
	c	Total tax paid		
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			Yes/No/ Not Applicable
9.1	If reply to 9 is Yes, then enter details			
Tax Payments				
	BSR Code	Date of payment	S I . No.	Amount
	Total			



10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1)	BSR Code	Date of payment	Sl. No.	Amount
		Total			
11	Statement of Facts				
		Facts of the case in brief (not exceeding 1000 words)			
		List of documentary evidence relied upon			
		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			
		Yes / No			
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)				
		1.			
		2.			
		3.			

14	Whether there is delay in filing appeal			Yes/ No
15	If reply to 13 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)			
16	Details of Appeal Fees Paid			
	BSR Code	Date of payment	Sl. No.	Amount
	Total			
17	Address to which notices may be sent to the appellant			

***Form of verification***

I, \_\_\_\_\_ 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

Date

Signature

# ANNEXURE-2

## FORM NO.36

**{{(SEE RULE 47(1))}}**

Form of Appeal to the Appellate Tribunal In the Income-tax Appellate Tribunal..... Appeal No..... of .....

Versus

.....

APPELLANT

RESPONDENT

1.	The State in which the assessment was made	
2.	Section under which the order appealed against was passed	
3.	Assessment year in connection with which the appeal is preferred.	
3A.	Total income declared by the assessee for the assessment year referred to in item 3	
3B.	Total income computed by the Assessing Officer for the assessment year referred to in item.3	

4.	The Assessing Officer passing the original order.	
5.	Section of the Income-tax Act, 1961 under which the Assessing Officer passed the order.	
6.	The Deputy Commissioner (Appeals) in respect of order passed before 1 <sup>st</sup> day of October, 1998 Commissioner (Appeals) passing the order under section 154/250/271/271A/272A	
7.	The Deputy Commissioner or the Deputy Director in respect of orders passed before the 1 <sup>st</sup> day of October, 1998, or the Joint Commissioner or the Joint Director passing the order under section 154/272A/274(2)	
8.	The Chief Commissioner or Director General or Director or Commissioner, passing the order under section 154(2)/250/263/271/271A/272A.	
9.	Date of communication of the order appealed against	

10	Address to which notices may be sent to the appellant	
11.	Address to which notices may be sent to the respondent.	
12	Relief claimed in appeal.	

### **GROUND S OF APPEAL**

1.

2.

.....

.....

Signed

Signed

(Authorized Representative,if any)

(Appellant)

### **VERIFICATION**

I, ..... , the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the .....day  
of.....

# ANNEXURE-3

## FORM NO. 36A

[See Rule 47(1)]

Form of memorandum of cross-objections to the  
Appellant Tribunal

In the Income-tax Appellate Tribunal .....

Cross-objection No.....of .....

In Appeal No..... of.....

Versus

.....

APPELLANT

RESPONDENT

1	Appeal No. allotted by the Tribunal to which memorandum of cross-objections relates	
2	The state in which the assessment was made	
3	Section under which the order appealed against was passed.	

4	Assessment year in connection with which the memorandum of cross-objections is preferred	
5	Date of receipt of notice of appeal filed by the appellant to the Tribunal	
6	Address to which notices may be sent to the respondent (cross-objector)	
7	Address to which notices may be sent to the appellant	
8	Relief claimed in the memorandum of cross- objections	

### **GROUND OF APPEAL**

- 1.
- 2.
- 3.
4. etc.

.....

Signed

(Authorized Representative, if any)

.....

Signed

(Respondent)

### **VERIFICATION**

I,.....,the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the .....day of .....

Signed

# STANDING ORDER UNDER INCOME-TAX (APPELLATE TRIBUNAL) RULES, 1963

In pursuance of sub -rule (1) of rule 4 of the income- tax (Appellate Tribunal) Rules, 1963, and in supersession of Standing Order No. 1 of 1987, dated the 17th July, 1987, as amended from time to time till date, it is hereby directed that subject to any special order, all appeals and applications from the Districts, States and Union Territories specified in Column 3 shall, with effect from 1st October, 1997, be heard and determined by the Benches specified in Column 2 of the Table below:

S. No.	Name & Number	Districts/States/Union Territories
1	Agra Bench (1)	Districts of Agra, Aligarh, Etah, Etawah, Farrukhabad, Firozabad, Jalaun, Jhansi, Lalitpur, Mahamayanagar, Mainpuri and Mathura of Uttar Pradesh. - Bihind, Datia Gunna, Gwalior, Morena and Shivpuri Districts of Madhya Pradesh



2	Ahmedabad Bench(3)	<p>-Gujarat (excluding the Districts of Amreli,Bhavnagar, Jamnagar, Junagarh, Kachchh, Rajkot and Surendernagar).- Union Territory of Dadra and Nagar Haveli.</p> <p>-Territory of Daman of the Union Territory of Daman &amp; Diu.</p>
3	Allahabad Bench(1)	<p>-Uttar Pradesh (excluding the districts of Agra, Aligarh Bahraich, Barabanki, Basti, Badaun, Bareilly, Bijnor, Bulandshahr, Etah, Etawah, Faizabad, Farrukhabad, Firozabad, Gautam Budh Nagar, Ghaziabad, Gonda, Hardoi, Jalaun, Jhansi, Jyotiba Rao Phule Nagar, Kanpur (Rural), Kanpur (Urban), Lalitpur, Lucknow, Laichimpur, Kheri, Mahamayangar, Mainpuri, Mathura, Meerut, Moradabad, Muzaffar Nagar, Pilibhit, Raibareilly, Rampur, Saharanpur, Seetapur, Shahjahapur and Unnao).</p> <p>Uttaranchal (excluding the districts of Almora, Chomoli, Dehradun, Haridwar, Nainital, PauriGarhwal, Pithoragarh, TehriGarhwal, Udham Singh Nagar and Uttarkashi).</p>

4	Amritsar Bench(1)	-Districts of Amritsar, Bhatinda, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar and Kapurthala of Punjab.
5	Bangalore Benches(3)	Karnataka (excluding the Districts of Belgaum, Mangalore, Karwar and North Kanara).
6	Calcutta Benches(5)	-West Bengal -Sikkim -Union Territory of Andaman and Nicobar Islands.
7	Chandigarh Benches (2)	-Punjab (excluding the Districts of Amritsar, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Kapurthala). Haryana (excluding Districts Faridabad, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonapat).- Himachal Pradesh. -Union Territory of Chandigarh.
8	Chennai Benches(4)	Tamil Nadu.-Union Territory of Pondicherry excluding Mahe.
9	Cochhin Bench (1)	-Kerala. -Union Territories of Lakshadweep, Minicoy and Amindivi Islands. -Mahe of the Union Territory of Pondicherry.

10	Cuttack Bench(1)	Orissa
11	Delhi Benches (7)	<p>-National Capital of Territory of Delhi</p> <p>-Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonapat of Haryana.</p> <p>- Districts of Badaun, Bijnor, Bulandshahr, Gautam Budh Nagar, Ghaziabad, Jyotiba Rao Phule Nagar, Meerut, Moradabad, Muzaffarnagar, Rampur and Saharanpur of Uttar Pradesh -Districts of Almora, Chamoli, Dehradun, Haridwar, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Uttarkashi of Uttaranchal</p>
12.	Guwhati Bench(1)	<p>Arunachal Pradesh, Assam</p> <p>-Manipur. -Meghalaya.</p> <p>-Mizoram. -Nagaland. -Tripura.</p> <p>-Andhra Pradesh (excluding the Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizianagaram)</p>

13	Hyderabad Benches (2)	Districts of Bhopal, Dewas, Dhar, Indore, Jhabua, Khandwa, Khargon, Mandsaur, Raisen, Ratlam, Sehore, Shajapur, Ujjain and Vidisha of Madhya Pradesh
14	Indore Bench(1)	-Madhya Pradesh (excluding the districts of Bhind, Bhopal, Datia,Dewas, Dhar, Guna, Gwalior, Indore, Jhabua, Khandwa, Khargon, Mandsaur, Morena,
15	Jabalpur Bench (1)	Raisen,Ratlam,Sehore, Shajapur, Shivpuri, Ujjain and Vidisha).
16.	Jaipur Bench(1)	-Rajasthan (excluding the Districts of Banswara, Barmer, Bhilwara, Bikaner, Chittorgarh, Churu, Dungarpur, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Rajsamand, Sirohi, Sriganganagar and Udaipur).- Districts of Banswara, Barmer, Bhilwara, Bikaner, Chittorgarh, Churu, Dungarpur, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Rajsamand,
17	Jodhpur Bench(1)	Sirohi, Sriganganagar and Udaipur of Rajasthan. - Mumbai City, Mumbai Suburban and Thane Districts of Maharashtra.

18	Mumbai Benches (10)	Buldhana, Chandrapur, Gadchiroli, Nagpur, Wardha and Yeotmal districts of Maharashtra.
19	Nagpur Bench(1)	-Goa. -Belgaum, Mangalore, Karwar and North Kanara districts of Karnataka.
20	Panaji Bench(1)	-State of Bihar -Maharashtra (excluding the Districts of Bhandara, Chandrapur, Gadchiroli,
21	Patna bench (1)	Mumbai City (Mumbai
22	Pune Bench (1)	Saburban, Nagpur, Thane, and Wardha)
23	Rajkot Bench (1)	-Districts of Amreli, Bhavnagar, Jamnagar, Junagarh, Kachchh, Rajkot and Surendernagar of Gujarat. -Territory of Diu of the Union Territory of Daman & Diu.
24	Visakhapatnam Bench(1)	-Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizainagram of Andhra Pradesh
25	Lucknow Bench(1)	-The districts of Barabanki, Bareilly, Basti, Bahraich, Faizabad, Gonda Hardoi, Kanpur(Rural), Kanpur(Urban), Lucknow, Lakhimpur, Kheri, Raibareilly, Shahjahanpur, Seetapur, Unnao.

26	Bilaspur Bench(1)	State of Chattisgarh
27	Ranchi Bench(1)	State of Jharkhand

2. All pending appeals and applications, except those in which orders have been reserved after hearing, will be governed by the above order. Appeals and applications already fixed for hearing will be heard by the Bench before which they are so fixed.

3. It is further directed that the reference applications, arising out of the orders passed by the Bench wherefrom the jurisdiction is transferred, shall be heard and decided by the Bench to which the jurisdiction now stands transferred.

4. The ordinary jurisdiction of the Bench will be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer.

5. All appeals and applications pertaining to the Rajkot, Panaji, Vishakhapatnam, Agra and Jodhpur Benches shall, however, be received at the Ahmadabad, Pune, Hyderabad, Delhi and Jaipur Benches respectively till the above said newly created Benches become functional. All such appeals and applications shall be separately registered/entered in the relevant registers,

meant for these newly created Benches, and shall be handed over to the concerned Bench(es) as and when the said Bench(es) become(s) functional.

Notification No. F. No. 63-Ad (AT)/97, dated 16-09-1997 as amended by Notification F. No. 63-Ad(AT)/ 2001, dated 19-10-2001, No. F. No. 63-Ad(AT)/2001, dated 29-5-2001 and No. F. No. 63-Ad (AT)/2009, dated 16-3-2009.

## **ANNEXURE-5**

### **ITAT GUIDELINES**

The Appellate Tribunal has, vide F. No. 114-Ad(AT)/69, dated 13-4-1970, laid down the following guidelines for the guidance of the assesses and their representatives:

1. In all communications addressed to the Tribunal by the parties with regard to appeals or applications or cross-objections the number thereof, or, if the number is not known, the date of filing thereof, should invariably be given. Failure to furnish the information will cause avoidable correspondence and needless delay in answering correspondence.
2. An application for adjournment of the hearing should be made at the earliest possible time. If it could be presented personally, it should be done so. If it cannot be presented personally, a stamped envelope with the address of the assesses or his representative should, as far as possible, accompany the application. If a reply is required telegraphically, the necessary postage stamps should accompany the application. If a telegram is sent asking for adjournment, arrangement should be made for a reply-paid telegram. The suggestion made in this paragraph is intended not so much as a measure of economy as a measure for greater efficiency. The Tribunal



is not bound to reply to applications for adjournment. Replies will, however, be given as far as possible. Unless the assesses hears that his application for adjournment has been granted, he should remain present at the hearing of the appeal or application or cross-objection, as the case may be.

3. Whenever an appeal or application or cross-objection is filed which is connected with an appeal or application or cross-objection relating to the same party filed earlier, reference thereto should invariably be given with the latter appeal or application or cross-objection so that the various connected appeals or applications or cross-objections could be linked up together. This will be for the convenience of the parties themselves. If any practitioner wishes that appeals and applications and cross-objections relating to different assesseees in which he is engaged should be taken up on the same or consecutive days, he should intimate to the Tribunal the particulars of these appeals and applications and cross-objections including the dates of filing thereof, well in advance.

4. An application for an early hearing for an appeal should invariably give detailed reasons why the assesses wants that his appeal should be given preference over the appeals made by other assesseees. The application should also state whether or not the tax has been paid and, if so, to what extent.

5. An application for sending for the case of another assessee should also be made at the earliest possible opportunity. Cases will not ordinarily be sent for, for the purpose of making an assessment on the same basis in other cases.

6. Attention is invited to rule 10 of the Appellate Tribunal Rules, 1963. That rule provides that where a fact which cannot be borne out by or is contrary to record is alleged, it should be stated clearly and concisely and should be supported by a duly sworn affidavit. Complaints are at times made before the Tribunal that certain statements attributed to the assessee or their representatives were in fact not made. Unless rule 10 is complied with, it is not ordinarily possible to go outside the record. An application for time for filing an affidavit as required by rule 10 at the time of hearing of the appeal will not ordinarily be granted. The object of this suggestion is to save time in hearing and deciding appeals, applications and cross-objections.

7. If an appeal/reference application/cross-objection is barred by time, or if there are reasons for believing that it may be barred by time, an application for condoning the delay should be made well in advance before the hearing of the appeal/application/cross-objection. Such an application should ordinarily be supported by an affidavit and other documentary evidence, as for example, a medical certificate.

8. Three copies (typed, if possible) of the statements made by the assessee or the witnesses or of documents relied upon or of extracts of accounts, where necessary, should be produced at the time of the hearing of the appeal, application or cross-objection. As far as possible, all such documents and papers should be in English or translated into English. This suggestion has been accepted by many solicitors and auditors appearing before the Tribunal. This suggestion is intended to facilitate the hearing of the appeal, application or cross-objection. Extracts of accounts should, if possible, be certified by the assessee's representative or by any other reliable person and be in English.

9. Books of account should be kept handy at the time of hearing of the appeal, application or cross objection. If books of account of the year preceding or succeeding year of account are relevant, they should also be kept handy.

10. Assesseees should, as far as possible, be present at the hearing of the appeal, application or cross objection. This suggestion is made entirely in the interest of the assesseees.

11. It has been noticed that requests are made to block the appeals to await decision of the High Court or the Supreme Court in -similar points involved in the appeals. In order to avoid multiplicity in proceedings,

the Appellate Tribunal acceded to such request. It is, however, found that in many of such cases, the particulars of the case involving the identical points are not on record so as to find out whether that case has been disposed of by the High Court/ the Supreme Court or not. This results in prolonging correspondence between the Tribunal and the parties causing long and avoidable delay in the disposal of those blocked appeals/applications/cross-objections. It is, therefore, suggested that an application for keeping the appeals/applications/cross-objections blocked should invariably furnish the particulars of the case pending with the High Court/the Supreme Court involving identical points for which the appeals or applications or cross-objections are sought to be blocked. The assesses and the departmental representatives should inform the Tribunal about the disposal of the case by the High Court or the Supreme Court immediately after its disposal so as to enable the Tribunal to dispose of such blocked cases soon thereafter. In this connection, it may be made clear that the Tribunal is not bound to keep such appeals/applications/cross-objections blocked for indefinite periods.

12. Whenever any appeal against the penalty order passed by the IAC is filed, the appellant should invariably inform the Tribunal in the forwarding letter whether any quantum appeal pertaining to the same assessment year is pending before the AAC concerned. The Tribunal should be informed immediately after the disposal of the

said quantum appeal by the AAC. If he said quantum appeal has already been disposed of by the AAC at the time of filing of the penalty appeal before the Tribunal, the date of filing of the quantum appeal before the Tribunal may be intimated to enable it to link both the appeals and post them for hearing on one date. In case no such quantum appeal is proposed to be filed before the Tribunal, the fact may be intimated to the Tribunal, so that the penalty appeal may be posted for hearing.