

**LAW OF TAXATION STUDY MATERIAL
(LAW 806)**

UNIT III

(INCOME TAX ACT 1961)

BY

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A. POWERS OF INCOME TAX AUTHORITIES IN INDIA

Entry 82 of the Union List of Schedule VII of the Indian Constitution grants the Central Government of India the authority to impose taxes on all types of income other than agricultural income. The major source of government revenue is the Income Tax Department. Income tax is the primary source of funding for the government's operations and to provide services to the public. Income tax authorities are required to prevent assessment of tax evasion, etc. In order to implement the Income Tax Act effectively and manage the Income Tax Department, the Government of India has established several authorities. Here we will read about the role, powers and functions of some income tax authorities.

Classes of Income Tax Authorities

Section 116 of the [Income Tax Act](#) provides the following classes of income tax authorities:

1. The Central Board of Direct Taxes
2. Directors General of Income Tax or Chief Commissioners of Income Tax
3. Directors of Income Tax or Commissioners of Income Tax or Commissioners of Income Tax (Appeals)
4. Additional Directors of Income Tax or Additional Commissioners of Income Tax or Additional Commissioners of Income Tax (Appeals)
5. Joint Directors of Income Tax or Joint Commissioners of Income Tax
6. Deputy Directors of Income Tax or Deputy Commissioners of Income Tax or Deputy Commissioners of Income Tax (Appeals)
7. Assistant Directors of Income Tax or Assistant Commissioners of Income Tax
8. Income Tax Officers
9. Tax Recovery Officers
10. Inspectors of Income Tax

Who Appoints Income Tax Authorities?

According to section 117 of the Income Tax Act, the central government has the power to appoint such persons as it deems fit to income tax authorities. The central government has the power to choose officials up to and above the rank of Assistant Commissioner of the Income Tax.

The central government, can further, authorise the appointment of income tax officials below the rank of a Deputy Commissioner or Assistant Commissioner by the Board, a Director-General, a Chief Commissioner, a Commissioner, or a Director. However, the appointment by such authorities is made according to the rules and regulations of the central government regulating the conditions of service of persons in public services and posts.

Central Board of Direct Taxes

The Central Board of Direct Taxes (CBDT) is a statutory body constituted under the [Central Board of Revenue Act of 1963](#). It functions under the jurisdiction of the Ministry of Finance, Government of India. The Board initially handled both direct and indirect taxes. However, when the administration of taxes became too burdensome for one to handle, the Board was divided into two: **the Central Board of Direct Taxes** and **the Central Board of Excise and Customs**.

It has the power to control and supervise all the officers of the income tax department. Along with this, the Central Board of Direct Taxes has the power to make such rules as are necessary for the administration and implementation of the provisions of the Income Tax Act. The rules made by the Board are controlled and approved by the central government.

Composition of Central Board of Direct Taxes

The Central Board of Direct Taxes comprises a chairman and six other members. The chairman is the head of the Board. The other six members must be ex officio special secretary to the government of India.

The six members of the Central Board of Direct Taxes deal with:

1. Income Tax & Revenue
2. Administration
3. Legislation
4. Audit and Judicial
5. Investigation
6. TPS & System

Powers of the Central Board of Direct Taxes

The Central Board of Direct Taxes has been empowered with the following powers by the Income Tax Act of 1961:

1. Power to appoint income tax authorities: Section 117 of the Income Tax Act gives the Board the power to appoint income tax authority below the rank of Deputy Commissioner or Assistant Commissioner if authorised by the central government.

2. Power to control and supervise: Section 118 of the Income Tax Act empowers the Board to control all the Income Tax Authorities subject to an overall framework of the Central Government.

3. Power to issue instructions and circulars: Section 119 of the Income Tax Act empowers the Board to issue instructions and circulars to its subordinate officials for the proper administration and implementation of the Income Tax Act. The Board has the power to give the following instructions:

1. Relaxation of certain provisions [sec 119(2)(a) of the Income Tax Act]
2. Extension of time limit [sec 119(2)(b) of the Income Tax Act]
3. Relaxation for claiming deduction [sec 119(2)(c) of the Income Tax Act]

4. Power to decide the powers and functions: Section 120 empowers the Board to decide on and issue the powers and functions of the other income tax authorities.

5. Power to issue general or special orders: The Board can issue general or special orders to relax the provisions of sections 115P, 115S, 139, 143, 144, 147, 148, 154, 155, 234A, 234B, 271 and 273 in order to properly and effectively manage the work of assessment and collection of revenue.

6. Power to transfer cases: Section 127 of the Income Tax Act empowers the transfer of a case from one Assessing Officer to another Assessing Officer subordinate to him after giving the concerned assessee a reasonable opportunity to be heard.

Income Tax Settlement Commission

The Income Tax Settlement Commission is a quasi-judicial body that was constituted in accordance with section 245B of the Income Tax Act.

According to section 245B(1) of the Income Tax Act, the income tax settlement commission is set up for the settlement of cases related to income tax. It is constituted under the supervision of the Central Government.

Composition of Income Tax Settlement Commission

The Settlement Commission consists of a Chairman, Vice-Chairman and other members. The number of Vice-Chairmen and other members is decided by the central government. The commission comprises individuals with integrity and who have special knowledge of and experience with issues involving direct taxes and business accounts.

Powers

The powers of the Income Tax Settlement Commission are:

1. The Income Tax Settlement Commission has been vested with powers similar to that of the Income Tax Authority in all the proceedings pending before it.
2. The Income Tax Settlement Commission has the power to grant immunity from [penalty](#) and prosecution to the person who has made the application.
3. Section 245E of the Income Tax Act empowers the Settlement Commission to reopen any completed proceeding which is connected to the case in the proceeding.

Powers of Other Income Tax Authorities

The income tax authorities have the following powers to prevent tax evasion or to implement the provisions of the Income Tax Act, 1961:

1. Discovery, Production of Evidence, etc. (Section 131): Section 131 of the Income Tax Act provides the income tax authorities with the same power as vested in the Civil Court under the Civil Procedure Code.

2. Search and Seizure (Section 132): Section 132 of the Income Tax Act grants the income tax authorities wide powers of search and seizure.

3. Power to Requisition Books of Account, etc. (Section 132A): The income tax authorities can direct any officer or authority to deliver books of account, other documents or assets to the requisitioning officer in the following cases:

1. If a summon or notice has been issued to any person to produce, or cause to be produced, any books of account or other documents, but he has either omitted or failed to do so.
2. If any books of account or other documents will be useful for any proceeding under the income tax act
3. If any assets represent wholly or partly the income or property and such income or property has not been or would not have been disclosed by the person from whose possession or control such assets have been taken into custody by any officer or authority.

4. Power to call for information (Sections 133): The Deputy Commissioner (Appeals), Commissioner (Appeals) or Deputy Commissioner have the power to call for the following information from the concerned person:

1. Direct any firm to provide a return of the addresses and names of partners of the firm and their shares.
2. Direct any Hindu Undivided Family to provide a return of the addresses and names of family members and the manager.
3. Direct any person who is a trustee, guardian or agent to provide a return of the names of persons for or of whom he is an agent, trustee or guardian and their addresses.
4. Direct any assessee to provide a statement of the names and addresses of all the persons to whom he has paid rent, interest, commission, royalty, etc., in any previous year.

5. Power of Survey (Section 133A): Section 133A of the Income Tax Act grants the power of survey to the income tax authority. The income tax authority has the power to enter any location within the limits of the area that has been allocated to him, any location that is occupied by a person under whom he exercises jurisdiction and any location that he is authorised to enter.

6. Power to Collect Certain Information (Section 133B): According to section 133B of the Income Tax Act, the income tax authority can enter any location within the limits of the area that has been allocated to him or any location that is occupied by a person under whom he exercises jurisdiction for collection of information which may be useful to them for any purpose.

7. Power to Inspect Registers of Companies (Section 134): According to section 134 of the Income Tax Act, the income tax authority has the power to inspect and take copies of any register of the members, [debenture holders](#) or mortgagees of any company, if necessary.

B. INCOME TAX RAID, SEARCH AND SEIZURE: WHAT, WHEN, HOW

Search and survey operations' are conducted by the Income Tax Department, also called raids, when they suspect an individual or business to hoard illegal money. A legal move against corruption by the Indian Government! Time and again, the Indian government has taken initiatives to discourage the hoarding of black money. Of all the viable ways to curb illegal wealth, income tax raids have been the most successful. Let's understand in detail about Income Tax Raids and how to prevent them.

Budget 2025 Update

- Under section 139, it was proposed to increase the time limit for filing of Updated Return from the existing 24 months to 48 months from the end of the relevant assessment year.
- The rate of additional tax payable on updated return filed after expiry of 24 months and upto 36 months from the end of relevant assessment year will be 60% of aggregate tax and interest payable.
- The rate of additional tax payable on updated return filed after expiry of 36 months and upto 48 months from the end of relevant assessment year will be 70% of aggregate tax and interest payable.
- Further, it was proposed that no updated return can be filed by a person for whom a notice to show-cause under section 148A was issued after the expiry of 36 months from the end of the relevant assessment year.

What is Black Money?

Black money is funds earned illegally on which income and other taxes have not been paid. The unaccounted money hoarded illegally and concealed from the tax authorities is also called black money. So, one mustn't keep any unaccounted or undeclared money, jewellery or any wealth. In the event of such non-declaration, the chances of the income tax authorities conducting a raid on the taxpayer will be pretty high. Therefore, the taxpayer also needs to safeguard himself while possessing someone else's money, ensuring that those are accounted for.

Plan Early and Get ahead for next year's savings

When does a Raid Happen?

An income tax raid, technically known as the process of Search and Seizure, is one of the crucial weapons that the Income-tax department possesses to check black money. It is a measure that is known to be constitutionally valid too. A raid gets triggered under any of the following circumstances:

- Credible information of tax evasion; for instance, any evasion coming out of reports received from the Intelligence Wing of the Income tax department.
- Information coming from government departments.
- Information procured from assessment records of taxpayers.
- Information received with regard to spending being disproportionate to the income of the taxpayer i.e. an instance of lavish spending without corresponding income to match the same.
- Manipulation of books of accounts, vouchers, invoices etc.
- Illegal investment in real estate.
- Unexplained cash credits, share transactions etc.

Who can Conduct a Raid?

According to Section 132(1) of the Income Tax Act, the

- Principal Director General or Director-General, or
- Principal Director or Director, or
- Principal Chief Commissioner or Chief Commissioner, or
- Principal Commissioner or Commissioner

may authorize an

- Additional Director, or
- Additional Commissioner, or
- Joint Director, or
- Joint Commissioner, or

- Assistant Director, or
- Deputy Director, or
- Assistant Commissioner, or
- Deputy Commissioner, or
- Income-tax Officer

To conduct a tax raid. The authorizing officer will do so, if he has a "reason to believe" that

- A taxpayer has failed to comply with any summons or notices sent to him by the Department or
- He has in his possession money, and secondly, such money represents either wholly or partly income or property which has not been disclosed.

It has been held by various courts that the taxpayer being searched ideally does not have the right to get access to information based on which the search has been initiated by the department, considering that this would hamper the department's investigation process. Only the High Courts and the Supreme Court have the right to do so.

Powers of Tax Authorities during a Raid

The officer authorized to carry out the raid can:

- Enter and search any building, place, etc., where he has a reason to suspect that the books of account, other documents, money, bullion, jewellery or other valuable article or thing representing undisclosed income is kept.
- Break open the locks where the keys are unavailable.
- Carry out a personal search of a person suspected to have secreted some item as mentioned in (1) above.
- Seize the things as mentioned in (1) above.
- Place identification marks and take extracts or copies of the books of account and other documents.
- Make a note or inventory of the valuables found during the search.

Assets that Can be Seized

The authorized officials can seize the following types of assets:

- Undeclared cash, jewellery
- Books of accounts, challan, diaries, etc.
- Computer chips and other data storage devices
- Documents relating to property, deed of conveyances, etc.

Assets that Cannot be Seized

The authorized officials cannot seize the following types of assets:

- Stock-in-trade (except cash) of a business
- Assets or cash which are disclosed before the Income Tax and Wealth Tax Department
- Assets declared in books of account
- Cash which are duly explained
- Jewellery provided in wealth tax return
- Gold up to 500 gm for each married lady and 250 gm for each unmarried woman, and 100gm per male member

Rights of a Person during a Tax Raid

- To insist on a personal search of ladies being taken only by a lady, with strict regard to decency
- To have at least two respectable and independent residents of the locality as witnesses
- A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public
- To call a medical practitioner in case of emergency
- To allow the children to go to school after checking their bags
- To have the facility of having meals, etc. at the usual time
- To inspect the seals placed on various receptacles, sealed in the course of search and subsequently at the time of reopening of the seals

- To have a copy of the panchanama together with all the annexures
- To have a copy of any statement that is used against him by the Department
- To have inspection of the seized books of account, etc., or to take extracts therefrom in the presence of any of the authorized officers or any other person empowered by him

Rights of a Person after a Tax Raid

The person from whose custody any books of account or other documents are seized may make copies thereof or take extracts therefrom in the presence of any of the authorized officers or any other person empowered by him. An aggrieved person can file a writ petition before the High Court challenging the raid, if he feels that the action of the department was unfair. He can also challenge the assessment and file an appeal before the Commissioner of Income Tax (Appeal).

Duties of a Person during a Raid

- To allow free and unhindered ingress into the premises
- To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorized officer
- To identify and explain the ownership of the assets, books of account and documents found in the premises
- To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by impersonation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code
- Not to allow or encourage the entry of any unauthorized person into the premises
- Not to remove any article from its place without notice or knowledge of the authorized officer. If he destroys any document with the intention of preventing the same from being produced or used as evidence before the court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code

- To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt, while his statement is being recorded by the authorized officer
- Being legally bound by an oath or affirmation to state the truth. If he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code
- Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished under section 191 of the Indian Penal Code
- To affix his signature on the recorded statement, inventories and the panchanama
- To ensure that peace is maintained throughout the search process, and to cooperate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.
- Similar co-operation should be extended even after the search action is over, so as to enable the authorized officer to complete necessary follow-up investigations at the earliest.

Procedure for Assesseees who have been Raided Wrongly

In the event that an assessee considers the raid unjust or that the income tax department has erroneously conducted a raid, they can challenge the raid by filing a writ petition with the High Court. Another option available to the assessee is to challenge or appeal the raid or assessment made by the authorities before the Commissioner of Income Tax (Appeals) if they believe they have been unfairly targeted.

C. INCOME TAX ASSESSMENT

After filing an income tax return, your ITR goes through several stages before the refund is credited to your bank account. One of them is Income tax assessment, wherein the Income Tax Department examines the income tax returns (ITR) filed by individuals and businesses. It involves verifying the income reported, deductions claimed, and tax liability calculated in the ITR. Let us read in detail below.

Types of Assessment in Income Tax

Self Assessment under Section 140 A

The taxpayer consolidates their total income from different sources and self-assesses their tax liability. The assessee adjusts their income against any losses incurred and applies deductions or exemptions, if applicable. After determining the total income, the assessee reduces any advance tax paid or TDS (if deducted) to calculate the remaining tax payable. If there are still taxes due (Self-Assessment Tax), the assessee must pay the Self-Assessment Tax before filing the tax return. This whole process is known as self-assessment.

Summary Assessment under Section 143(1)

Summary assessment is the first stage of tax assessment, where overview scrutiny will be conducted; no detailed scrutiny will be there to check plausible clerical errors such as,

1. Mathematical miscalculations or arithmetical errors in the return.
2. Incorrect claim
3. Incorrect disallowance
4. Errors occurring from form 16, 16A, or 26AS.
5. Disallowance of expenses u/s 10AA, 80 IA to 80 IE if the return is furnished beyond the due date specified u/s 139(1).

No such adjustment shall be made unless an intimation is given to the assessee of such adjustment in writing or electronic mode.

Scrutiny Assessment under Section 143(3)

An officer will be assigned to review the filings carefully and ensure that the computed tax liability is not under or overstated by the assessee. The objective of this assessment is to confirm that the taxpayer has not understated the income, has not computed excessive loss, or has not underpaid the tax in any manner. Detailed scrutiny will be conducted.

In case a mismatch is found in the submitted statement, the assessee could agree with the claim, or if he has some dissatisfaction, he could appeal to the commissioner of income tax appeals

(CITA) further to the income tax appellate tribunal (ITAT), high court or supreme court respectively.

Regular Assessment

The Income Tax Department authorizes the assessing officers, generally the income tax officers or above ranks, to conduct an assessment. This assessment is to be conducted to ensure that the taxpayers haven't understated and overstated their income and filed their ITR within the tax compliances.

The Central Board of Direct Taxes (CBDT) has set some perimeters for identifying cases for scrutiny assessments. When a taxpayer's case is flagged for scrutiny, they receive advance notice. However, this notice must be sent to the taxpayer within six months from the end of the financial year in which the return was filed.

During the assessment process, taxpayers are required to provide their books of accounts and supporting documentation to verify their income claims. The Assessing Officer then evaluates the book of accounts and documents to come to a conclusion that the declared income is accurate or requires adjustment. If differences are found, additional tax liabilities may be imposed.

Best Judgment Assessment under Section 144

In the best judgment assessment, the assessing officer bases the assessment on his best judgment, i.e., he must not act dishonestly or capriciously. Best judgment assessment refers to a situation where the officer computes the tax payable as the assessee does not comply with providing or maintaining necessary source documents or books of accounts to support the claim when requested to submit.

In this scenario, the officer computes the tax liability based on his best judgment. The Income Tax Act specifies certain situations under which the income tax officer can compute tax liability based on best judgment,

1. When the assessee does not file an income tax return
2. When the assessee does respond to the notice requesting the submission of documents

3. The response of the assessee has crossed the limit permitted by the Central Board of Direct Taxes (CBDT)
4. When the officer is not satisfied with the documents provided.

Income Escaping Assessment under Section 177

When the assessing officer has reasons to believe that any income chargeable to tax has escaped assessment for a financial year, an income escaping assessment will be conducted. In such cases, the income tax department holds full authority to revisit and review 6 years' tax filings if the alleged amount is Rs. 1,00,000 or more.

As per budget 2021, the time limit for opening the case has been reduced from 6 years to 3 years. However, for cases where concealment of income exceeds Rs. 50L (Serious Tax evasion cases), cases can be opened for 10 years.

Scenarios that may Trigger Reassessment

1. When the assessee is found to have taxable income but has not filed income tax returns for the particular financial year.
2. The assessee understated their income or claimed incorrect deductions or exemptions in their filed ITR.
3. Failure to furnish information relating to international income and unaccounted overseas assets

Penalty for non-filing of income tax returns

If the return is filed after the due date, then 3 scenarios will be there-

1. If the Gross Total Income is Rs.2.5 lakh or less, then the penalty will be Nil.
2. If the total income is more than Rs.2.5 lakhs and up to Rs. 5 lakh, then the penalty will be 1000.
3. If the total income is more than 5 lakh, then the penalty will be Rs.5,000.

As per the last budget, after 31st Dec, returns will not be filed, and the penalty cannot be levied. However, for FY20-21, the last date of filing has been extended.

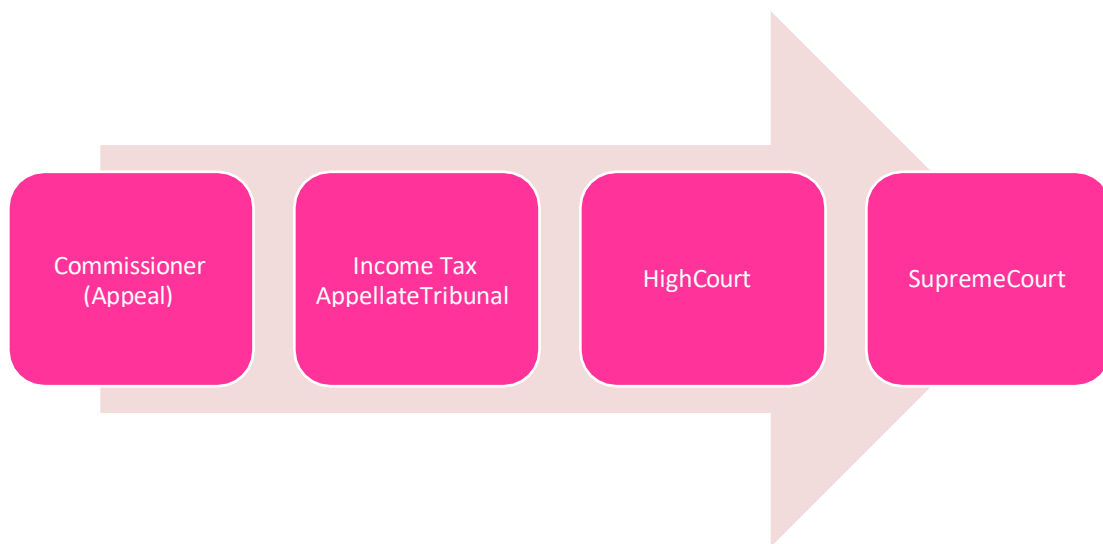
When the date of filing u/s 139(1) has been exceeded, the assessee will not be able to carry forward losses except for House Property Losses incurred for the financial year.

Pending for unpaid taxes would be chargeable 1% of tax liability for every month or part of the month until the payment of the amount. However, for FY20-21, the due date for filing ITR is 30th September, but if self-assessment tax liability exceeds one lakh, then tax needs to be paid before 31st July 2021 to avoid 1% interest u/s 234A.

D. APPEALS AND REVISIONS IN INCOME TAX






In general, any cases being filed and heard first in Civil Court, thereafter aggrieved parties may file a case in High Court and for further relief or justice, aggrieved party finally file case in Supreme Court. But the cases of Revenue are not file to Civil Court. The route of revenue cases is different.

When it comes to income tax, taxpayers often find themselves at odds with the decisions made by assessing officers. To ensure fairness and justice, the Income Tax Act, 1961 provides avenues for redressal through appeals and revisions. These mechanisms enable taxpayers to challenge and seek rectification of assessment orders that they deem erroneous or prejudicial. Any Assessee or any Deductor or any Collector of tax at source, who is aggrieved from the order passed by the Assessing officer, shall first file an appeal to the Commissioner (appeal). Then case shall be moved and an appeal shall be filed to Appellate tribunal, by the assessee or Deductor or Collector of tax at source or Principal Commissioner or Commissioner of Income tax as the case may be, if they are aggrieved with the order passed by the Commissioner (Appeal). Thereafter case shall be moved to High Court, if assessee or Deductor or Collector of tax at source or commissioner is aggrieved to the order passed by the Appellate tribunal and at last to Supreme Court, if Assessee or Deductor or Collector of tax at source or Principal commissioner is aggrieved to the order passed by the High court . Thus route of income tax revenue cases is as follows.



SECTIONS COVERED

APPEAL AND REVISION

- Section 246 – 251  Appeal before the Commissioner (Appeal)
- Section 252-256-  Appeal to the Appellate Tribunal
- Section 260A – 260B  Appeal to High Court
- Section 261- 262-  Appeal to Supreme Court
- Section 263-264-  Revision of Orders

STEPS INVOLVED. Generally following three steps are involved in compliance of the provisions of Appeal and Revision under the Income Tax Act, 1961.

a. Appealable Orders

- To decide whether the order passed by the AO is appealable before the CIT (Appeal) or not.
- To decide whether the order passed by CIT(Appeal) is appealable before the ITAT or not. Similarly order passed by ITAT before the High court and Order passed by High Court to the Supreme Court is appealable or not.

b. Filing of Appeal

- Filing of Appeal before the CIT (Appeal), ITAT, High Court , Supreme Court.
- Accompanied with Facts of case, Ground of Appeal, Original order of AO, Order passed by CIT (appeal) or ITAT or High Court as the case may be, fee of appeal filing, Cross Objection , relevant evidence, etc, .

c. Hearing and pronouncement of orders

- E. Communication of date of hearing by the court.
- F. Pronouncement of order after heard of both Appellant and Respondent.

Appealable Orders to file appeal before the Commissioner (Appeal) u/s 246A

Section115VP(3)(ii)	Refusing to approve the option for tonnage tax scheme filed by A Qualifying Indian Company having business of operating of ships to the Joint Commissioner.
Section143(1),(1B),(3)	Regular Assessment order passed or/intimation by the AO in response to return filled u/s 139 or Order after scrutiny of return Filed passed u/s142(1) or by CPU(Central Processing Unit)
Section200A(1)	Processing of statement of Tax deducted at source
Section206CB(1)	Processing of statement of Tax collected at source
Section144	Best judgment assessment order
Section144BA(12)	Reference to Principal commissioner in certain cases at any stage of assessment proceeding by the AO, if he belief and satisfy that arrangement/agreement revoke meaning of Generally Anti Avoidance Rule under chapter XA, for assessment
Section115WE(3)	Assessment order passed by the AO against return of fringe Benefit tax
Section115WF	Best judgment of fringe benefit
Section115WG	Fringe benefits escaping assessment
Section147	Income escaping assessment i.e. reassessment, re-computation
Section150	Reassessment or re-computation in consequence to order Passed by way of appeal, court

Section153A	Assessment in case of search or requisition
Section92CD(3)	Order passed to advance pricing agreement.
Section154	Rectification Order
Section155	Other amendments
Section163	Treating the assessee as the agent of non-resident
Section170(2),(3)	Succession to business otherwise than on death.
Section171	Assessment order after participation of HUF
Section201	Consequences of failure to deduct tax or pay the deducted tax at Source
Section206C (6A)	Consequences of failure to collect tax or pay the collected tax at Source
Section237	Refund claimed not paid or short paid
Section221, 271,271A,272,275,158BFA,271B, 271BB,271C,271CA, 271D,271E,272A,272AA	An order imposing a penalty

Form of Appeal and Procedure

- Appeal shall be filed in Form No. 35 and shall be filed electronically.
- Appeal shall be filed within 30 days of the service of notice or in case of order u/s 248, the date of payment of tax. CIT (Appeal) may condone the delay in filing appeal; if he satisfies that there is a sufficient cause to do not file appeal by the appellant within stipulated time. If there is a delay in filing appeal, appellant must mention valid reason for delay and pray to condone the delay in filing appeal whiling uploading Form No. 35.
- Fee shall be Rs. 250/- if amount of total income computed by AO is Rs. 1 lakhs. Rs. 500/- , if computed income is Rs. 1 lakh to Rs. 2 lakh, Rs. 1000/-, if computed income is more than Rs. 2 lakh. If computed income is less than Rs. 1 lakh or nil, fee shall be Rs. 250/- . Details about appeal fee has to be mention in Form No.35, like BSR code, Challan serial number, Date of payment, amount paid.

- Facts of case and Grounds of appeal must be precise and with relevant section of Income tax Act has to be mention in Form No.35. An application to pray for stay of demand till disposal of case should be accompanied with the form. Pre-deposit, 20% of demand has to pay on or after the appeal is filed.
- CIT (Appeal) shall fix date and place of hearing and give notice to both, appellant and AO.
- CMA has to furnish Power of attorney to plead the case on behalf of assessee before the CIT (appeal) and affix a court fee stamp value of at least Rs. 5 or of value as per relevant State Stamp Law.
- After heard of both parties, order shall be passed by the commissioner (Appeal).
- Appeal to Appellate Tribunal, Sec.253
- Aggrieved party may file an appeal against the order passed by CIT (Appeal).
- Appeal shall be filed to ITAT in Form No. 36 within 60 days of service of order from the office of Commissioner (Appeal). Form No. 36 shall be filed manually either in person or through speed/registered post or courier.
- Fee shall be Rs. 500/-, if demand is up to Rs. 1 lakh. Or Rs. 1000/-, if demand is from Rs. 1 lakh to Rs. 2 lakh, or 1% of demand subject to maximum amount Rs. 10,000/- if demand is more than Rs. 2 lakh. Copy of challan must be accompanied with the Form 36.
- An application for stay demand till the disposal of case by the Income Tax Appellate Tribunal shall be accompanied by a fee of Rs. 500/-
- Form 36, shall be filed in triplicate, accompanied with 2 copies at least one should be certified to be true, copy of appeal order, 2 copies of relevant Assessing Officer order, 2 copies of grounds of appeal or grounds of objection. One copy shall be given back to the appellant as a token of acknowledgment.
- Memorandum of cross-objection shall be filed, by respondent in Form No. 36A, in triplicate, within 30 days from the date service of notice by ITAT. No fee is required to be paid. Cross objection has to file by the respondent.
- Bench of Appellate tribunal shall fix the date of hearing. There shall be one judicial member and one account member seated in the appellant tribunal bench. The bench shall be OC (One member court) or DC (Double member Court). Sometime bench shall hear the case through Video conferencing i.e, e-court. After heard to both i.e. appellant and respondent, may pronounce and pass the order within 4 years from the date of filling the appeal to ITAT.
- The ITAT have all the powers which are vested in income tax authority u/s 131, and any proceedings before the ITAT shall be deemed judicial proceeding within the meaning of sec. 193 and 228 of Indian Panel Code and appellate tribunal shall be deemed to be a Civil court for all the purposes of sec. 195 of the code of Criminal Procedure.

Statement of case to the High Court, Sec. 256

- The Assessee or Principal commissioner or commissioner, may within 60 days of the date of order served by ITAT, file an application in Form No. 37 to the ITAT and require the ITAT to refer to the High court any question of law arising out of such order. The assessee shall pay a fee of Rs.200 and accompanied with the application. No fee has to pay in case application is filed by the Principal Commissioner or Commissioner as the case may be.
- ITAT shall within 120 days draw up a statement of the case and refer to the High court.
- If ITAT refuse the application on the ground that there is no question of law arise in such order, then assessee or commissioner as the case may be, shall within Six months apply to the High court against the refusal of ITAT.
- A bench of two judges of High court shall hear the case and shall direct the appellate tribunal to
- make a statement of substantial question of law, if they found that there is a question of law arises in such order passed by the appellate tribunal.

Statement of case to the Supreme Court, Sec. 257

- If, on an application u/s 256, the Appellate tribunal is of the opinion that, on account of a conflict in the decisions of High courts in respect of any particular question of law, it is expedient that a reference should be made direct to Supreme court.

Appeal to High Court, Sec. 260A

- An appeal shall lie to the High court from every order passed in appeal by the Appellate tribunal, if High court is satisfied that the case involves a substantial question of Law.
- The word 'substantial question of Law' has not been defined. But the expression has acquired connotation through a catena of judicial pronouncements. Usually five tests are used to determine whether a substantial question of Law involved.
 - (i) Whether, directly or indirectly it effects substantial rights of the parties
 - (ii) The question is of general public importance
 - (iii) Whether it is an open question in the sense that issue has not been settled by pronouncement of the supreme court or the Privy Council or by the Federal court
 - (iv) The issue is not free from the difficulty, and
 - (v) It calls for a discussion for alternate view.
- CIT or assessee aggrieved by any order of ITAT may file appeal to High Court within 120 days from the date of order received, along with a memorandum of appeal precisely stating therein the substantial question of law involved.

- When High court is satisfied that a substantial question of law is involved shall admit the case and it shall formulate the question.
- The appeal shall be heard only on the question so formulated.
- It shall be heard by a bench of two judges.

Appeal to Supreme Court, Sec.261

- An appeal shall lie to the Supreme Court from any judgment of the High court delivered in any case which High court certifies to be fit one for appeal to the Supreme Court.
- Provisions of the Code of Civil Procedure, 1908 relating to appeals u/s section 261 shall apply.
- Revision of orders prejudicial to revenue, Sec. 263
- The Principal commissioner or commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the AO is erroneous and is prejudicial to the interest of the revenue, he may direct for fresh assessment.
- Revision order shall be passed within a period of two years form the end of F.Y. in which the order passed.
- Order of revision in consequence of direction by ITAT, High court or Supreme Court, shall be passed at any time.

Revision of other orders, Sec. 264

- In any other order other than order to which sec.263 applies, commissioners may, either suo motu or on an application filed by the assessee for revision, call the record of any proceeding and revise the order.
- No order shall be passed suo motu by the commissioner more than one previous year.
- Assessee shall filed application within a period of one year from the date on which he has served the order.
- Commissioner shall not pass revision order if case is pending for disposal before the court of any commissioner (Appeal), ITAT, High Court or Supreme Court.
- Every application shall be accompanied with a fee of Rs. 500/-
- Order under this section shall be passed within one year from the end of f.y. in which application made.

E. RECTIFICATION OF INCOME TAX RETURN U/S 154

Rectification is an option given to you by the Income Tax Department for correcting a mistake apparent from record in your Income Tax Return. You need to submit a rectification request if there is any mistake apparent from record in your tax return notified to you in an intimation

issued u/s 143(1) by the CPC or an order passed u/s 154 by your AO. A rectification request can be submitted only for returns that are already processed by CPC.

What is Section 154?

- Only an authorized officer can issue a notice under section 154 of Income Tax Act.
- If such a rectification results in an increase or decrease in the tax liability or a reduction of refund, then it becomes important to provide notice.
- Excess refund credited to the account of the taxpayer shall be demanded through Section 154 of income tax.
- The taxpayer's application for rectification should be disposed off within 6 months of the end of the month in which the application is received.
- Where rectification is done on its own, then such rectification can take place up to four years from the end of the FY in which the rectification order is passed.
- Any order which is a subject matter of appeal or revision cannot be rectified.
- If any order is passed by the Commissioner (Appeals), then he too can rectify the mistake.

What Errors can be Corrected by Filing a Rectification?

The Income Tax Department allows a rectification request when there is a mistake in your Income Tax Return. The following errors can be rectified by filing a rectification request -

- An error of fact
- An arithmetic mistake,
- A small clerical error
- Error due to overlooking of compulsory provisions of law.

When and Who Can File the Rectification?

A rectification request can only be filed for returns that are already processed in CPC Bangalore. If there is a change in the income upon rectification, instead of a rectification request, a revised ITR should be filed. Also, no new deductions or exemptions are allowed to be claimed.

A rectification request can be filed by a person -

- Who is filing the return
- The Income Tax Authority can also rectify a mistake on its own if it appears on the face of the record.

Orders Which can be Rectified u/s 154

The key lies in the fact that rectification cannot be made freely for any mistake. Also, there is a specified process through which rectification can be resorted to. The following orders can be rectified on request or on the discretion of the income tax officer as per section 154

- Any order passed under any provisions of the Income-tax Act
- Any intimation or deemed [intimation under section 143\(1\)](#)
- Any intimation sent under section 200A(1) in relation to the processing of TDS return
- Any intimation under section 206CB(1) in relation to the processing of TCS return

Rectification of an Order Which was Subjected to Appeal or Revision

Rectification u/s 154 can be done for any matter that is not considered and decided in appeal/revision. Further, any matter which has already been considered and decided in any proceedings by way of appeal or revision, the rectification of such matter is not possible under section 154.

Example:

Suppose the A.O.(Assessing officer) has made the following adjustments to the returned income of PQR Ltd.

- Certain expenses of Rs. 1,00,000 were disallowed.
- Addition u/s 43B made for Rs 1,25,000 as proof of payment was not furnished.

Now, the following is the current position of the assessee, i.e., PQR Ltd.

- The assessee has already filed an appeal against the first matter of disallowing Rs 1,00,000 expenditure, and the appeal is decided against the assessee.

On submitting the rectification application, the Assessing Officer rejected the same, giving reasoning that this particular case has already been decided by the appellate authority; hence, no rectification request can be admitted in such a scenario.