

CONTENTS



	PAGE
<i>Foreword</i>	I-5
<i>About the Author</i>	I-7
<i>Preface</i>	I-9
<i>Acknowledgements</i>	I-11
<i>About the Book</i>	I-13

1

APPEAL, MEANING, CONCEPT AND SCOPE

1.1	Meaning	1
1.2	Right to appeal not inherent or implied	1
1.3	Judicial view	2
1.4	Right to appeal to be liberally construed	3
1.5	Judicial view	3
1.6	Appellate process <i>vis-à-vis</i> writ	4
1.7	Judicial view	5
1.8	Conclusion	10

2

LAW GOVERNING THE RIGHT TO APPEAL

2.1	Nature of right to appeal	11
2.2	Judicial view on the nature of right to appeal	11
2.3	Law governing appeals - Retrospective or prospective changes in law	12
2.4	Judicial view on law governing appeals	12
2.5	Rules governing appellate proceedings	14
2.6	Judicial view on scope/limitation of rules	15

3

APPELLATE PROCESS UNDER THE INCOME-TAX ACT

3.1	Introduction	16
3.2	Overview of statutory provisions of the Act relating to Joint Commissioner/Commissioner (Appeals)	17
3.3	Appeal v. Revision	18
3.4	Judicial view differentiating revisionary and appellate powers	18
3.5	Alternate dispute resolution mechanisms	19

4

INSTITUTION OF COMMISSIONER (APPEALS)

4.1	Statutory framework	20
4.2	Judicial view on the role of Commissioner (Appeals)	21
4.3	Summary of legal provisions relating to Commissioner (Appeals)	22

5

INSTITUTION OF JOINT COMMISSIONER (APPEALS)

5.1	Statutory framework [Section 246]	24
5.2	Appealable orders for appeal before Joint Commissioner (Appeals) [Section 246(1)]	25
5.3	Appeal against assessment orders	25
5.4	Appeal against orders relating to TDS/TCS matters	27
5.5	Relating to penalty orders	28
5.6	Relating to rectification orders	28
5.7	Orders against which appeal cannot be filed before Joint Commissioner (Appeals) [Proviso to section 246(1)]	28
5.8	Transfer of pending appeal from Commissioner (Appeals) to Joint Commissioner (Appeals) [Section 246(2)]	29
5.9	Meaning of appeal 'pending' before Commissioner (Appeals)	29
5.10	Relevance of expression "any matter arising out of or connected with such appeal and which is so pending"	31

	PAGE
5.11 Transfer of pending appeal from Joint Commissioner (Appeals) to Commissioner (Appeals) [Section 246(3)]	33
5.12 Disposal of appeals in a faceless manner [Section 246(5)]	34
5.13 Form of appeal and limitation [Section 249]	34
5.14 Procedure of appeal [Section 250]	34
5.15 Limitation period to dispose of the appeal by Joint Commissioner (Appeals) [Section 250(6A)]	35
5.16 Powers of the Joint Commissioner (Appeals) [Section 251]	35
5.17 Powers of the Joint Commissioner (Appeals) to levy penalty	35
5.18 Consequential amendments due to the introduction of the Joint Commissioner (Appeals)	36
5.19 Amendment in other provisions of the Act	36

6

RIGHT TO APPEAL

6.1 Introduction	38
6.2 Assessee	38
6.3 Person deemed to be an assessee	39
6.4 Judicial view	40
6.5 Person deemed to be an assessee in default	40
6.6 “Deductor” or “Collector”	41
6.7 Meaning of assessee “aggrieved”	42
6.8 Judicial view	42
6.9 Who can file an appeal - General	43
6.10 Individual	43
6.11 Procedure for registering legal heir	44
6.12 Judicial view	46
6.13 Hindu undivided family	46
6.14 Judicial view	46
6.15 Company	46
6.16 Judicial view	47
6.17 Firm	47
6.18 Judicial view	47

6.19	Association of persons, body of individuals (whether incorporated or not), local authority, and every artificial juridical person	48
6.20	Judicial view	48

7

APPEALABLE ORDERS BEFORE THE COMMISSIONER (APPEALS)

7.1	Introduction	49
7.2	Appealable orders before Joint Commissioner (Appeals)	49
7.3	Appealable orders before Commissioner (Appeals)	50
7.4	Judicial view	53
7.5	Order by a Joint Commissioner under section 115VP(3)(ii) rejecting an application under Tonnage Tax Scheme	53
7.6	Order holding a person liable to be assessed under the Act	54
7.7	Judicial view	54
7.8	Appeal against an intimation under section 143(1) or section 143(1B)	56
7.9	Judicial view	57
7.10	Appeal against intimation under section 200A(1) or section 206CB(1) where the deductor or collector objects to be making of adjustments in the statement of TDS or TCS filed (as amended by the Finance Act, 2015 w.e.f. 1-6-2015)	58
7.11	Judicial view	59
7.12	Appeal against assessment under section 143(3) or 144	60
7.13	Judicial view	62
7.14	Appeal against (re)assessment under section 147 with respect to income escaping assessment	64
7.15	Judicial view	65
7.16	Appeal against an order of assessment under section 153A in case of search or requisition	66
7.17	Appeal against an order passed by an Assessing Officer pursuant to an Advanced Pricing Agreement (APA)	66
7.18	Appeal against an order of rectification of mistake	67
7.19	Judicial view	67
7.20	Appeal against order under section 163 treating assessee as agent of non-resident	69

	PAGE
7.21 Judicial view	69
7.22 Appeal against an order under section 170 treating a person as a successor	69
7.23 Appeal against order under section 171 as regards partition of a Hindu Undivided Family	70
7.24 Judicial view	70
7.25 Appeal by person charged as assessee in default under section 201 or 206C for not deducting or collecting tax at source	70
7.26 Judicial view	71
7.27 Appeal against an order under section 237 refusing refund	71
7.28 Judicial view	72
7.29 Appeal against an order under section 239A relating to refund of tax paid under an agreement or arrangement in writing	72
7.30 Appeal against penalty orders	73
7.31 Judicial view	74
7.32 Non-appealable orders/situations	75
7.33 Judicial view	76

8

APPEAL BY PERSON DENYING LIABILITY TO DEDUCT TAX (SECTION 248 AS APPLICABLE W.E.F. 1.6.2007)

8.1 Introduction	79
8.2 Legislative intent	79
8.3 Meaning	80
8.4 Judicial view	80
8.5 Amendment made by Finance Act, 2022	83

9

PROCEDURE FOR FILING OF APPEAL [SECTION 249(1) AND RULES 45 & 46]

9.1 Pre-filing analysis	84
9.2 Form of appeal	85
9.3 Manner of filing	86
9.4 Procedure for filing of appeal and accompanying documents	87

	PAGE
9.5	Manner of furnishing accompanying documents 87
9.6	Procedure for e-filing of appeal to Commissioner (Appeals) 87
9.7	Administrative procedure for e-filing of appeals 90
9.8	Filing appeal electronically using digital signatures 90
9.9	“Electronic Verification Code” (EVC) - Meaning and procedure 91
9.10	Verification of appeal 94
9.11	Judicial view 96

10

STATEMENT OF FACTS (SoF) AND GROUNDS OF APPEAL (GoA)

10.1	Introduction 102
10.2	Statement of Facts (SoF) 102
10.3	Grounds of Appeal (GoA) 105
10.4	Conclusion 109

11

FEEs FOR FILING OF APPEAL BEFORE COMMISSIONER (APPEALS) [SECTION 249(1)]

11.1	Introduction 111
11.2	Judicial view 112
11.3	Comment 112

12

LIMITATION PERIOD FOR FILING APPEAL [SECTION 249(2) AND SECTION 249(3)]

12.1	Period of limitation 113
12.2	Manner of determining date of service - Statutory provisions 113
12.3	Service of communication by other than electronic mode 114
12.4	Service of communication electronically 116
12.5	Conclusion 117
12.6	Exclusion of time for calculating limitation for filing appeal [Section 268] 117
12.7	Situation where due date is a holiday 118
12.8	Judicial view on date of service 119

	PAGE
12.9 Condonation of delay [Section 249(2) and 249(3)]	<i>121</i>
12.10 Judicial view on sufficient cause in the context of the Income-tax Act	<i>123</i>
12.11 Manner of filing an affidavit in support of reasons for delay	<i>127</i>
12.12 Judicial view on filing of affidavit in support of reasons of delay	<i>128</i>
12.13 Judicial view on procedure to be followed for condonation of delay	<i>128</i>
12.14 Judicial view on circumstances exhibiting existence of "sufficient cause"	<i>129</i>
12.15 Judicial view on circumstances not exhibiting existence of "sufficient cause"	<i>137</i>

13

PAYMENT OF ADMITTED TAX BEFORE FILING OF APPEAL [SECTION 249(4)]

13.1 Legal provisions	<i>141</i>
13.2 Judicial view	<i>142</i>
13.3 Exemption from payment of advance tax payable when no return of income has been filed [Proviso to section 249(4)]	<i>149</i>

14

PROCEDURE IN APPEAL BEFORE COMMISSIONER (APPEALS) [SECTION 250 SUB-SECTIONS (1), (2) AND (3)]

14.1 Introduction	<i>150</i>
14.2 Notice of hearing	<i>150</i>
14.3 Format of notice of hearing issued by NFAC	<i>152</i>
14.4 Personal appearance in faceless proceedings	<i>152</i>
14.5 Filing of response or submission of report in response to notice issued by NFAC	<i>153</i>
14.6 Transfer of case	<i>153</i>
14.7 Miscellaneous	<i>153</i>
14.8 Judicial view on notice of hearing	<i>154</i>
14.9 Right to be heard	<i>155</i>
14.10 Judicial view on the right to be heard	<i>155</i>
14.11 Authorised representative	<i>158</i>
14.12 Judicial view	<i>162</i>

	PAGE
14.13 Power/right to grant/seek adjournment	163
14.14 Judicial view	164
14.15 Judicial view on adjournments sought by/failure of counsel (authorized representative) to appear before appellate authority	164
14.16 Rectification proceedings (clause 7 of the Faceless Appeal Scheme, 2021)	165

15

POWER OF COMMISSIONER (APPEALS) TO MAKE FURTHER ENQUIRIES [SUB-SECTION (4) OF SECTION 250]

15.1 Introduction	168
15.2 Calling of information and conducting further enquiry by the Commissioner (Appeals) [Section 250(4)]	170
15.3 Calling of information etc. at the instance of Assessing Officer	170
15.4 Exercise of power to make enquiries at the instance of an assessee	170
15.5 Judicial view	171
15.6 Enquiry by Commissioner (Appeals) through the Assessing Officer/power of remand	174
15.7 Judicial view	174
15.8 Procedure for making further enquiries either <i>suo motu</i> or at the instance of the Assessing Officer in faceless appellate proceeding	176

16

ADDITIONAL GROUND/FRESH CLAIM BEFORE COMMISSIONER (APPEALS) [SECTION 250(5)]

16.1 Introduction	177
16.2 Supreme court's view on the right to raise additional ground	178
16.3 Judicial view on the right to agitate additional ground	180
16.4 Finding to be recorded for exercise of power under section 250(5)	182
16.5 Judicial view	182
16.6 Judicial view on law of limitation for additional ground	184

	PAGE
16.7 Fresh claim	185
16.8 Judicial view	185
16.9 Filing of additional ground in faceless appeal proceedings	189

17

ADMISSION OF ADDITIONAL EVIDENCE (RULE 46A OF THE INCOME-TAX RULES, 1962)

17.1 Introduction	191
17.2 Powers to make rules regulating admission of additional evidence	192
17.3 Circumstances in which additional evidence may be produced [Rule 46A(1)]	193
17.4 Commissioner (Appeals) to record reason for admission of additional evidence [Rule 46A(2)]	193
17.5 Reasonable opportunity to be provided to Assessing Officer [Rule 46A(3)]	194
17.6 Additional evidence can be obtained by first appellate authority on its own motion [Rule 46A(4)]	194
17.7 Judicial view on vires of rule 46A	194
17.8 Summary of provisions relating to production and admission of additional evidence	194
17.9 Judicial view on filing of additional evidence and power of Commissioner (Appeals)	196
17.10 Judicial view on failure to provide opportunity to Assessing Officer being fatal to admission of additional evidence	203
17.11 Judicial view on the necessity of Commissioner (Appeals) to give a categorical finding in terms of rule 46A for admission of additional evidence in case Assessing Officer objects to the admission thereof	208
17.12 Judicial view on sending documents submitted by appellant to the Assessing Officer for remand report	210
17.13 Comparison of rule 46A(4) of the rules and section 250(4) of the Act - Complementary not conflicting	211
17.14 Judicial view	212
17.15 Procedure for admission of additional evidence (clause 5(1)(vii) and (viii) of the Faceless Appeal Scheme, 2021)	214

18**MODALITY OF PASSING ORDERS BY THE COMMISSIONER
(APPEALS) AND COMMUNICATION OF THE ORDERS PASSED
[SECTION 250(6) AND (7) RESPECTIVELY]**

18.1	Introduction	217
18.2	Judicial view on reasoned and speaking order	219
18.3	Judicial view on consolidated order for more than one appeal	223
18.4	Passing of final appeal order under faceless appeal proceedings	224

19**ADVISORY LIMITATION FOR DISPOSAL OF APPEALS
[SECTION 250(6A)]**

19.1	Introduction	225
19.2	Departmental circular on advisory time-limit for disposal of appeals by the Commissioner (Appeals)	225
19.3	Departmental instructions on time-limit for passing of orders by the Commissioner (Appeals)	226
19.4	Judicial view	227

20**FACELESS APPEALS [SUB-SECTIONS (6B), (6C) AND (6D)
INSERTED BY THE FINANCE ACT, 2020 W.E.F. 1-4-2020]**

20.1	Introduction and scope	228
20.2	Faceless appeal centres (Paragraph 4 of the Scheme)	231
20.3	Assignment of appeal	232
20.4	Procedure after assignment of appeal (Paragraph 5(ii) of the Scheme)	232
20.5	Procedure for submitting condonation of delay in filing appeal to Commissioner (Appeals)	232
20.6	Exercise of power u/s 250(4) (Para 5(1)(ii) and (iii) of the Scheme) and further procedure in faceless appellate proceedings	235
20.7	Filing additional ground(s) (Para 5(1)(v) and (vi) of the Scheme)	235
20.8	Filing additional evidence (Para 5(1)(viii)(a) to (g) of the Scheme)	236

	PAGE
20.9 Procedure for submitting additional evidence to Commissioner (Appeals)	237
20.10 Requisition by the NaFAC or Assessing Officer for the production of documents or evidence or examination of witness relevant for appellate proceedings (Para 5(1)(viii) (h) to (l) of the Scheme)	240
20.11 Enhancement of assessment/penalty or reduction of the amount of refund (Para 5(1)(ix) of the Scheme)	241
20.12 Passing of final appeal order (Para 5(1)(x) of the Scheme)	241
20.13 Transfer of case to another Commissioner (Appeals) (Para 5(2) of the Scheme)	242
20.14 Penalty proceedings (Para 6 of the Scheme)	242
20.15 Rectification proceedings (Para 7 of the Scheme)	243
20.16 Personal appearance during faceless proceedings (Para 12 of the Scheme)	244
20.17 Delivery of electronic record (Para 11 of the Scheme)	245
20.18 Exchange of communication exclusively by electronic mode (Para 9 of the Scheme)	247
20.19 Authentication of electronic record (Para 10 of the Scheme)	247
20.20 Specifying format, mode, procedure and processes by the NFAC (Para 13 of the Scheme)	247
20.21 Appeal against order passed by NFAC (Para 8(1) of the Scheme)	248
20.22 Proceedings in remand cases (Para 8(2) of the Scheme)	248
20.23 Definitions and concepts used in the Faceless Appeal Scheme	248
20.24 Benefits envisaged from the faceless appeals process	250
20.25 Potential pitfalls/areas of concern	251
20.26 Judicial view	255

21

POWERS OF THE COMMISSIONER (APPEALS) [SECTION 251]

21.1 Introduction	256
21.2 Confirmation of assessment/tax liability	257
21.3 Judicial view	258

	PAGE
21.4 Reduction of assessment/tax liability	259
21.5 Enhance the assessment/tax liability	259
21.6 Judicial view	260
21.7 Exercise of power of enhancement at the instance of Assessing Officer	264
21.8 Reasonable opportunity of showing cause	265
21.9 Judicial view	266
21.10 Power to annul an order/assessment	269
21.11 Judicial view on the powers of “annulment”	270
21.12 Appeals against the levy of penalty	271
21.13 Judicial view	271
21.14 Powers of Commissioner (Appeals) wide ranging and coterminous with the Assessing Officer	272
21.15 Judicial view - Powers of Commissioner (Appeals) <i>vis-a-vis</i> court of appeal under code of civil procedure	272
21.16 Judicial decisions - Scope of powers of Commissioner (Appeals) co-terminous with Assessing Officer	273
21.17 Judicial view on the power of Commissioner (Appeals) to levy penalty	277
21.18 Judicial view on power of Commissioner (Appeals) to reject books of account	277
21.19 Judicial view on non-exercise of power/errors made by the Assessing Officer can be corrected by the first appellate authority	277
21.20 Judicial view on limitations on the power of Commissioner (Appeals)	278

22

LEGAL PRINCIPLES RELEVANT IN APPELLATE PROCEEDINGS

22.1 Doctrine of merger - Introduction	282
22.2 Principle of consistency - Introduction	290
22.3 Binding force of judicial precedents - Introduction	295
22.4 “Obiter dicta” and “ratio decidendi”	298

23**APPEALS AGAINST AGREED ADDITIONS**

23.1	Introduction	305
23.2	Procedure to be followed in appeal against agreed additions	306
23.3	Judicial view in favour of the assessee (holding that the appellate proceedings can be pursued in case of agreed additions)	306
23.4	Judicial view favouring revenue (that appeal does not lie against agreed additions)	307

24**APPELLATE PROVISIONS - POWER TO WITHDRAW**

24.1	Introduction	310
24.2	Judicial view	310

25**STAY OF DISPUTED DEMAND**

25.1	Power of appellate authority to stay disputed demand [Section 220(6)]	312
25.2	Judicial view upholding the right of Commissioner (Appeals) to grant stay	313
25.3	Judicial view denying the Commissioner (Appeals) power to grant stay	315
25.4	Judicial view on grant of stay miscellaneous issues	315

26**SPECIAL PROVISIONS FOR AVOIDING REPETITIVE APPEALS
(CHAPTER - XIV-A)**

26.1	Introduction	317
26.2	Procedure	317
26.3	Declaration by assessee	317
26.4	Report from Assessing Officer	318
26.5	Order of the Assessing Officer or the Appellate Authority	318
26.6	Admission of claim	318
26.7	Application of decision	319

	PAGE
26.8 Order to be final	319
26.9 Judicial view	319

27

DISPUTE RESOLUTION COMMITTEE - AN ALTERNATIVE TO THE APPELLATE PROCESS (CHAPTER XIX-AA)

27.1 Introduction	321
-------------------	-----

APPENDICES

APPENDIX 1:	Faceless Appeal Scheme, 2021	329
APPENDIX 2:	Specimen of challan for payment of appeal fees	343
APPENDIX 3(A):	Specimen of notice of hearing issued by the national faceless appeals centre	344
APPENDIX 3(B):	Specimen of notice of hearing issued for personal hearing before Commissioner (Appeals)	346
APPENDIX 4:	Specimen application under section 46A seeking admission of additional evidence	348
APPENDIX 5:	Specimen of application to seeking permission to agitate additional ground/make fresh claim before Commissioner (Appeals)	351
APPENDIX 6(A) :	Initiation of reassessment proceedings u/s 148 of the Income-tax Act	353
APPENDIX 6(B) :	Addition u/s 68 of the Act	372
APPENDIX 6(C) :	Addition of Rs. XXXXXXX being the alleged difference in receipts reported in Form 26AS and actual receipts from M/s xxxxxx	396
APPENDIX 6(D):	Addition of Rs. XXXXXX reduced by the appellant company from its profit as an adjustment pursuant to ICDS VII- "Government Grants"	404
APPENDIX 6(E):	Addition on account of purchases made from various parties by treating them as bogus by resorting section 37 of the Act	412
APPENDIX 6(F):	Addition u/s 56(2)(viib) on account of alleged excess share premium received	419
APPENDIX 6(G):	Assessment framed not in accordance with departmental procedures and consequently <i>void ab initio</i> and <i>non est</i>	433
APPENDIX 6(H):	Addition on account of deemed dividend under section 2(22)(e)	438

	PAGE
APPENDIX 6(I):	Denial of exemption u/s 10(38) on long term capital gains 445
APPENDIX 6(J):	Treating interest received during construction period as a revenue receipt 467
APPENDIX 6(K):	Addition on account of alleged misutilization of facility of client code modification 475
APPENDIX 6(L):	Addition on account of foreign exchange fluctuation loss 482
APPENDIX 6(M):	Addition by rejecting books of account and adopting an arbitrary 489
APPENDIX 6(N):	Challenge of assumption of jurisdiction u/s 153A 495
APPENDIX 6(O):	Denial of exemption under section 54F for capital gains invested in the purchase of a residential property 500
APPENDIX 6(P):	Addition u/s 14A r.w. rule 8D on account of expenses incurred to earn exempt income and on account of mismatch in receipts disclosed in the profit and loss account and those appearing in Form 26AS 511
APPENDIX 6(Q):	Addition on account of imputing notional interest income on interest free advances 519
APPENDIX 6(R):	Disallowance under sec. 14A r.w.r. 8D on account of expenses incurred to earn exempt income, exceeding exempt income or where there is no exempt income 525
APPENDIX 6(S):	Penalty under section 271(1)(b) for alleged failure to comply with a notice u/s 142(1) or 143(2) 529
APPENDIX 6(T):	Levy of penalty under section 271(1)(c) for alleged concealment/furnishing inaccurate particulars of income 531
APPENDIX 6(U):	Additions on account of <i>ad hoc</i> disallowances out of expenses 546
APPENDIX 6(V):	Disallowance of share based compensation ("ESOP") expenses 550