

Appeal before Commissioner of Income Tax(Appeal)

Women & Young Members Empowerment
Committee - Sky High Symposium 45

22nd March 2023

Speaker: CA Rupal Shah



INTRODUCTION

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Background

- ▶ After an assessment - an assessee has two options either to file an appeal before CIT(A) or revision petition to CIT u/s. 264
- ▶ CIT(A) is the First Appellate Authority under the Income Tax Act.
- ▶ Best opportunity to regularize issues not dealt with or incorrectly dealt with in the assessment order.
- ▶ No right of appeal to Revenue or Department. Only revision under Section 263
- ▶ Particularly in high pitched assessments where pressure of recovery will be there, assessee requires to file appeal, stay petition before AO, application for early hearing and reply to penalty notice.

Preparatory steps before filing an Appeal - 1

- ▶ Read the assessment order twice.
- ▶ Ascertain the date of receipt of order. Under e-assessment or CPC processed returns, receipt is on mail on the same day so date of order and date of service of order will be same.
- ▶ Call for all notices particularly notice u/s 143(2), 142(1) and Show cause notices issued during assessment proceedings and replies thereto. In case of reassessment call for notice u/s 148, reply thereto, recorded reasons, objections to reopening and order disposing objections. Copy of sanction. Take necessary action if assessee doesn't have the same.
- ▶ Where statement during survey, search or assessment proceedings are relied upon by AO or statement of third parties are relied upon or third party evidences are relied upon call for the same. Take necessary action if assessee doesn't have the same.

Preparatory steps before filing an Appeal - 2

- ▶ Also apply for order sheet noting where AO has relied on the same.
- ▶ Ascertain whether any reasons for addition / disallowance not covered by the Show Cause Notice require production of additional evidence.
- ▶ Ascertain whether additional evidences are required, to meet the objections of the AO. If yes then ascertain cogent reasons for not filing the same before AO.
- ▶ Ascertain whether it is possible to arrange additional evidence before expiry of period of limitation.
- ▶ Where-ever additional evidence are required to be filed , ground of improper opportunity of hearing must be taken.
- ▶ In case of reopening always take a general ground of reopening.



Statutory Provision relating to CIT(A)

- ▶ Section 246A - Appealable Orders (*exhaustive list*)
- ▶ Section 248 - Appeal by Person denying liability to deduct tax u/s. 195
- ▶ Section 249 - Form of Appeal and Limitations
- ▶ Section 250 - Procedure in Appeal
- ▶ Section 251- Power of the CIT (A)
- ▶ Rule 46A - Filing of Additional Evidence

Filing an appeal before CIT(A)

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graph TD; A[Filing an appeal before CIT(A)] --> B[U/s 246A]; A --> C[U/s 248]; B --> D[Against the order passed by the Assessing officer (AO) u/s 143(1), 143(3), 147, 154, 201, 271 etc]; C --> E[Against the order passed by the Assessing officer (AO) u/s 195]
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U/s 246A

- ▶ Against the order passed by the Assessing officer (AO) u/s 143(1), 143(3), 147, 154, 201, 271 etc

U/s 248

- ▶ Against the order passed by the Assessing officer (AO) u/s 195

List of Order which are appealable before CIT (A) [Section 246A] - 1

Order Passed U/s	Note
143(1) or (1B),200A(1) or 206CB(1)	An Intimation, where assessee objects to the making of adjustment in return of income or statement of TDS or TCS
143(3)	Scrutiny assessment
144	Best judgment assessment
147	Income escaping assessment
153A,153 C	Assessment or reassessment in search case
154,155	Relating to rectification
163	Treating the assessee an agent of non-resident
170 (2) or (3)	Relating to assessment on successor
171	Assessment after partition of HUF

List of Order which are appealable before CIT (A) [Section 246A] - 2

Order Passed U/s	Note
201	Treating the assessee deemed to be assessee in default for failure to deduct the whole or any part of the tax or pay tax after deduction
206(C)(6A)	Treating the assessee deemed to be assessee in default for failure to collect the whole or any part of the tax or after collecting fails to pay the tax
237	Relating to refund
270 to 275	Penalty orders under Chapter XXI
92CD(3)	Order passed on modified return filed in accordance with and limited to the advance pricing agreement

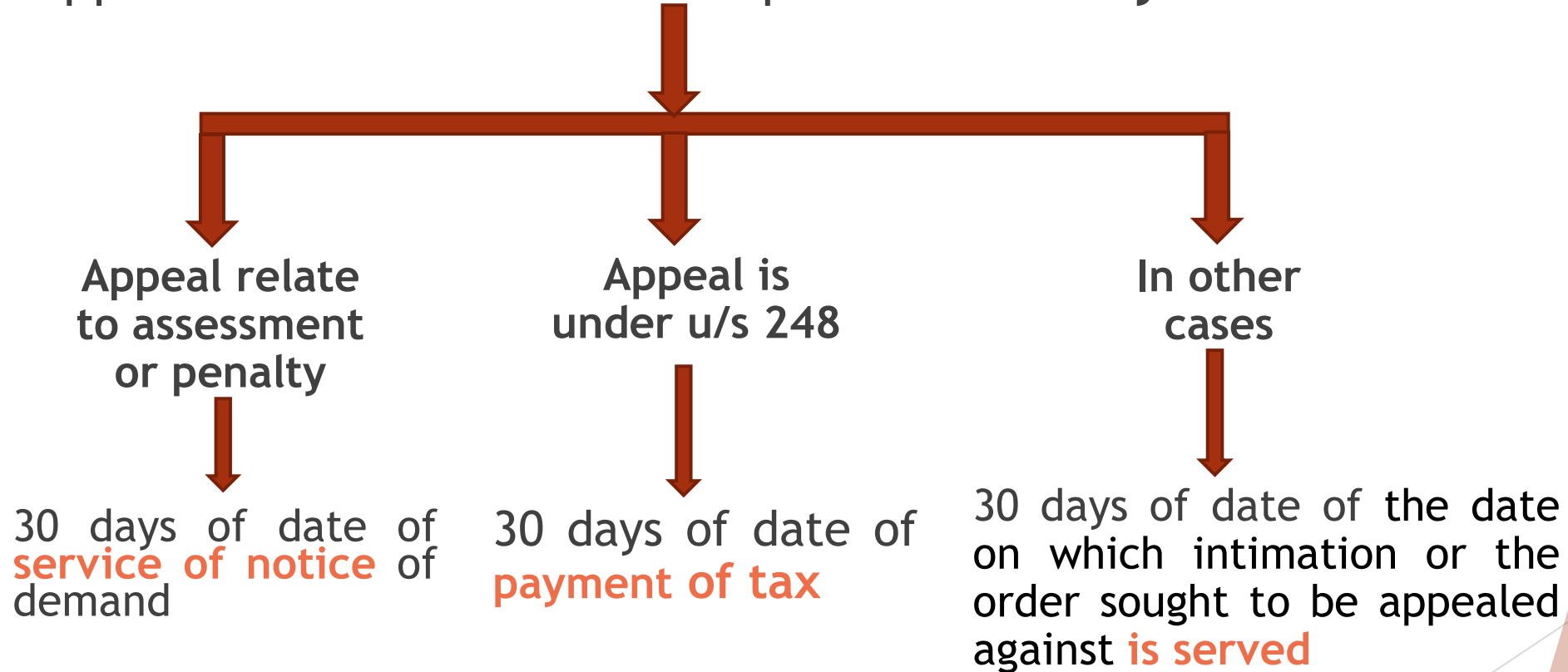
Non-Appealable Orders

Following orders not mentioned specifically u/s 246A

- ▶ Order u/s 197(1) passed by AO [Non deduction of TDS or deduction at lower rate]
- ▶ Interest charged u/s 220(2)
- ▶ No objection by the assessee to the rectification of assessment order
- ▶ Rectification u/s 154 made on assessee's consent
- ▶ Assessment made on agreed basis

Time Limit to file an Appeal [Section 249(2)]


Appeal should be file within a period of 30 days if





LEGAL KATTA

CONDONATION OF DELAY APPLICATION



LEGAL DRAFTING

A black rectangular graphic with white and yellow text. At the top left, the text "LEGAL KATTA" is written in white, with "LEGAL" in a red box. Below this, the main title "CONDONATION OF DELAY APPLICATION" is written in large, bold, yellow uppercase letters. To the right of the title is an illustration of a person's hands typing on a laptop, with a coffee cup and some papers nearby. At the bottom right, the text "LEGAL DRAFTING" is written in white, with "LEGAL" in a red box.

Condonation of delay in filing appeal [Section 249(3)]

- ▶ Where the appellant has sufficient cause for not filling the appeal by the due date, CIT(A) may condone the delay.
- ▶ It will be advisable that the appeal in such case is accompanied by an application for condonation of delay narrating reason for delay.
- ▶ If the CIT(A) refuse to admit appeal after the prescribe period, the assessee has a right to file an appeal again such order.

Condonation - General Principles

- ▶ Sufficient cause must be liberally construed
- ▶ Technical faults Vs. Cause of Justice
- ▶ Length of Delay is immaterial
- ▶ Litigant never benefits by resorting to delay
- ▶ If no malafide intention - delay shall be condoned
- ▶ Condonation is however an exception and not a rule

Condonation - Reasons

Following reasons may be stated for condonation

- ▶ Lack of Proper knowledge
- ▶ Serious illness of the assessee or family member
- ▶ Absence of due guidance by the consultant
- ▶ Facts surfacing at a latter date
- ▶ Reconciliation of various accounting items later on
- ▶ Computer getting infected - repaired later on

Reasons to avoid

- ▶ Through oversight, etc
- ▶ Wrong advice by CA

Fees for filing an appeal before CIT(A) [Section 249 (1)]



Clause	Criteria	Fees
(a)	Where total income/loss computed by AO is Rs 1,00,000 or less	Rs 250
(b)	Where total income/loss computed by AO exceed Rs 1,00,000 but does not exceed Rs 2,00,000	Rs 500
(c)	Where total income/loss computed by AO exceed Rs 2,00,000	Rs 1000
(d)	Where the subject matter of an appeal is not covered under clauses (a),(b) and (c)	Rs 250

* In case of assessed loss : Minimum fees is Rs 250

Tax payable before filing an appeal [Section 249 (4)]

No appeal shall be admitted unless
at the time of filing an appeal :-

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graph TD; A[No appeal shall be admitted unless at the time of filing an appeal :-] --> B[Where return has been filed and the assessee has paid tax due on the return income]; A --> C[Where no return has been filed, the assessee has paid an amount equal to the amount of advance tax which was payable by him];
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Where return has been filed
and the assessee has paid tax
due on the return income

Where no return has been filed,
the assessee has paid an amount
equal to the amount of advance
tax which was payable by him

* In case assessee has not filed its return, the CIT(A) on an application made by the assessee, may, for **any good or sufficient reason** to be recorded in writing, exempt him from payment of tax.

E-filing of appeal



Procedure for e-filing of Form 35

- ▶ Login to user account in Income Tax E-filing Website
- ▶ Go to menu ▫ e-File ▫ Income Tax Form
- ▶ Select Form 35 and select submission mode as Prepare and submit online
- ▶ Select the National Faceless appellant authority from drop down box.
- ▶ Fill up the details in Form 35 and Verification part thereof.
- ▶ The following documents shall be required while filing form -35
 - ❖ Order against which appeal is being filed
 - ❖ Notice of Demand
 - ❖ In case of appeal against penalty, penalty order and assessment order
 - ❖ Others - SOF, GOA, Appeal Fees challan and other documents
- ▶ Attachment must not exceed 50mb in size and must be in pdf/zip format.
- ▶ Appeal should be verified through DSC or EVC as the case may be, of the person who is authorized to verify the return u/s 140 of the Act.

Drafting of Grounds of Appeal

- ▶ No format has been prescribed for drafting grounds of appeal
- ▶ It should be precise, comprehensive, clear and constructively numbered.
- ▶ Should not be argumentative or narrative
- ▶ It should be based on law point as well as merit point.
- ▶ It should be in order of addition made in assessment order
- ▶ Separate ground for each addition must be taken
- ▶ Statement of facts should not be mixed with Grounds of appeal
- ▶ Must mention the Appellant craves leave to add/ alter/ amend/ withdraw any or all grounds of appeal before or at the time appeal proceedings
- ▶ Levy of interest, if any, should be taken as ground of appeal

Drafting of Statement of Facts

- ▶ No format/order has been prescribe for drafting statement of facts
- ▶ It should have facts only and not the law points.
- ▶ Facts should contain only those facts which are relevant and directly or indirectly connected with the additions made in the assessment order
- ▶ Facts should be clear and should not be in argumentative form
- ▶ Story of the case is to be mentioned here
- ▶ Facts should also cover those facts which are not considered by AO.
- ▶ It should be comprehensive and complete.
- ▶ Legal Decisions in support - whether to be mentioned ??? - Yes / No

Form 35 to file before CIT(A) [Rule 45]

- ▶ An appeal to CIT(A) shall be made in Form No.35. and should be filed electronically
- ▶ Check all pre-filled details like - PAN, name, address, Phone no., email address etc
- ▶ Select assessment year
- ▶ Insert details of the order appeal against - section, sub-section under which the order passed, DIN, Date of order and Service of order.
- ▶ Details of an appeal in relation to any other assessment year is pending in the case of the appellant with any CIT(A).
- ▶ If appeal relates to any assessment, provide details of appeal : amount of income assessed, total addition or disallowance, amount of addition or disallowance, disputed demand etc.

Contd....

Form 35 to file before CIT(A) [Rule 45]

- ▶ An appeal relates to penalty, provide detail of penalty order
- ▶ If return has been filed, provide detail of taxes paid
- ▶ If assessee paid taxes under the influence of sec 249(4), provide details of tax payment-BSR code, serial no. etc.
- ▶ Statement of facts in brief - must not exceed 1000 words
- ▶ Grounds of appeal - each ground must not exceed 100 words
- ▶ If there is delay in filing an appeal, enter grounds for condonation- must not exceed 500 words
- ▶ Detail of challan or appeal fees paid u/s 249(1) of the act
- ▶ Form 35 does not accept special character e.g. # & % “” ‘ ‘ * = + [] \ } ! etc.

Contd...

Specimen of Form 35

FORM 35
[See rule 45]

Appeal to the Commissioner of Income-tax (Appeals)
Designation of the Commissioner of Income-tax (Appeals) – 32, Mumbai

Name and address of the Appellant	
Mobile No. and Email ID	
Whether notices/ communication may be sent on email?	
Permanent Account Number	
Tax Account Number (If available)	
Assessment year in connection with which the appeal is preferred	
Assessing officer / Valuation officer passing the order appealed against	
Section and sub-section of the Income-Tax Act, 1961, under which the Assessing officer / Valuation officer passed the order appealed against and the date of such order	
Order Number of Assessment Order	
Where the appeal relates to any assessment or penalty, the date of service of the relevant notice of demand	
In any other case, the date of service of the intimation of the order appealed Against	
Section and clause of the Income-tax Act 1961, under which the appeal is preferred.	
Amount of Income Assessed	
Total Addition to Income	
In case of Loss, total disallowance of Loss in assessment (in Rs.)	
Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.)	
Amount of Disputed Demand (in Rs.)-Enter Nil in case of Loss	
If appeal relates to penalty ?	
Amount of penalty as per order (in Rs.)	
Amount of penalty disputed in Appeal (in Rs.)	
Where a return has been filed by the appellant for the assessment year in connection with which	

Specimen of Form 35

the appeal is preferred, whether tax due on the returned income has been paid in full (If the answer is in the affirmative, give details of payment and amount paid) Also provide acknowledgement number and date of filing.	
Where the appeal relates to any tax deducted under section 195(1), the date of payment of the tax	
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 (If the answer is in the affirmative, give details of payment and amount paid)	
Facts of the case in brief	
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	
If reply to above is Yes, furnish the list of such documentary evidence	
Grounds of Appeal	
Whether there is delay in filing appeal ?	
If reply to above is Yes, enter the grounds for condonation of Delay	
Details of Appeal Fees Paid (BSR Code, Date of Payment, Serial Number, Amount)	
Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Commissioner (Appeals), give details as to the : (a) Commissioner (Appeals), with whom appeal is pending; (b) Appeal Number; (c) Date of Appeal; (d) assessment year in connection with which the appeal has been preferred; (e) Assessing Officer passing the order appealed against;	

Specimen of Form 35

(F) section and sub-section of the Act under which the Assessing Officer passed the order appealed against and the date of such order	
Address to which notices may be sent to the appellant	

Signed
(Appellant)

STATEMENT OF FACTS ANNEXURE 1
GROUNDS OF APPEAL ANNEXURE 2

Signed
(Appellant)

Form of Verification

I, _____ in capacity as secretary of _____, the appellant, do hereby declare that what is stated above is true to the best of my knowledge and belief.

Signed
(Appellant)

Mumbai: Status of appellant – Partner

Notes:

1. The form of appeal, grounds of appeal, and the form of verification appended thereto shall be signed by a person in accordance with the provisions of rule 45(2).
2. The memorandum of appeal, statement of facts, and the grounds of appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.
3. Delete the inappropriate words.
4. These particulars will be filled in the office of the Deputy Commissioner (Appeals) / Commissioner (Appeals).
5. Not to be filled in if the appeal relates to tax deducted under section 195(1).
6. If the space provided herein is insufficient, separate enclosures must be used for the purpose.
7. If appeals are pending in relation to more than one assessment year, separate particulars in respect of each assessment year may be given.

Additional Evidence - Rule 46A

- ▶ Appellant shall not be entitled to file any additional evidence at the appellate stage except the following :
- ▶ Where the assessing officer has **refused to admit evidence** which ought to have been admitted ; or
- ▶ Where the appellant was **prevented by sufficient cause** from producing the evidence which he was called upon to produce by the assessing officer ; or
- ▶ 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
- ▶ 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



Faceless Appeal Scheme 2021



Communication from Income tax department

The screenshot displays the e-Filing portal interface. At the top, there is a navigation bar with options like 'Dashboard', 'e-File', 'Authorised Partners', 'Services', 'Pending Actions', 'Grievances', and 'Help'. The user is logged in as an 'Individual'. The main content area is titled 'e-Proceeding' and shows a list of proceedings. The first entry is 'First Appeal Proceedings' for the assessment year '2013-14'. The user's PAN and the name of the assessee are redacted with black bars. A 'View Notices (9)' button is highlighted in yellow, indicating the next step to view appeal-related notices. There is also a '+ Add / View Authorised Representative' button.

- ▶ After filing Form 35 electronically user can see appeal related information under “e-proceeding” tab on income tax portal.
- ▶ In our eg assessee has file an appeal for AY 2013-14. To view appeal related notices user need to click “View Notice” tab.

Communication from Income tax department

Notice/ Communication Reference ID : 100053527475

Notice u/s	ITBA/NFAC/S/62/2022-23/1046645248(1)	Description : [ITBA]Enablement of Communication Window	View Response
Document reference ID		Issued On : 01-Nov-2022	Notice/Letter pdf
			Seek/View Adjournment

- ▶ Once you click on “View notice” tab user will see that the income tax department will first issue notice relating to “[ITBA] Enablement of communication window”. Such notice say that the appeal window for such user has been open by the income tax department.

Communication from Income tax department

Notice/ Communication Reference ID : 100055733117			
250 Notice u/s	ITBA/NFAC/F/APL_1/2022-23/1048353122(1) Document reference ID	Description : [ITBA]Hearing Notice u/s 250of Income Tax Act 1961. Issued On : 30-Dec-2022 Response Due Date : 16-Jan-2023	View Response Notice/Letter pdf Seek/View Adjournment

- ▶ After notice of Enablement of communication window received from the department user will receive “Hearing Notice u/s 250 of the act”. To view/download such notice user need to click on “Notice/ Letter” tab.
- ▶ Once hearing notice received user need to submit his/her reply by clicking on “Submit” tab and once user submit his reply same can be seen by clicking on “View Response” tab.
- ▶ If user want an adjournment of his hearing same can be done by clicking on “Seek/View Adjournment” tab.

Communication from Income tax department

View Response to Notice ID 100055733117

Proceeding Name First Appeal Proceedings	PAN [REDACTED]	Assessee Name [REDACTED]	Financial Year 2012-13
Assessment Year 2013-14	Document reference ID ITBA/NFAC/F/APL_1/2022-23/1048353122(1)	Notice Section 250	Served on -

Description
[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.

Responses + Add New Response

Response/Remarks	Response Submitted On	Response Type	Response Filled By
Dear Sir Please see attached point wise submission and index of paper book with relevant documents. We also seek opportunity for personal hearing through video conferencing pursuant to Rule 12(2) of National Faceless Appeal Scheme 2021	16-Jan-2023	Full	Self

Attachments

MKT AY 13-14 Paperbook Part VII [REDACTED].pdf (4 MB)	[REDACTED] Paperbook Part VIII [REDACTED].pdf (4 MB)
[REDACTED] 16 Jan 2023 [REDACTED].pdf (20 KB)	Index_of_Paper_Book 16 Jan 2023 Index_of_Paper_Book 16 Jan 2023.pdf (29 KB)
MKT AY 13-14 Paperbook Part I [REDACTED].pdf (3 MB)	MKT AY 13-14 Paperbook Part II [REDACTED].pdf (3 MB)
MKT AY 13-14 Paperbook Part III [REDACTED].pdf (3 MB)	MKT AY 13-14 Paperbook Part IV [REDACTED].pdf (3 MB)
[REDACTED] Part VI [REDACTED].pdf (3 MB)	MKT AY 13-14 Paperbook Part VI.pdf (3 MB)

[Acknowledgement](#)

- ▶ Once user click on view response tab user will see the above screen from where user can download acknowledgment of his reply by clicking on “Acknowledgment” tab

Communication from Income tax department

Select by Notice ID 🔍

Notice/ Communication Reference ID : 100057077198

VC_APL Notice u/s	ITBA/NFAC/F/VC_APL/2022 -23/1049275270(1) Document reference ID	Description : [ITBA]VC NOTICE Issued On : 31-Jan-2023 Response Due Date : 15-Feb-2023	View Response Notice/Letter pdf Seek/View Adjournment Seek Video Conferencing
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- ▶ After submitting reply of hearing notice user will receive the notice of “Video conference” (VC) from income tax department.
- ▶ User need to give his reply by clicking on “Seek Video Conferencing” tab.
- ▶ Once user click on seek video conference tab link will be provided by the income tax department on the registered e mail id of the user to attend the hearing through VC.

Power of CIT(A)

- ▶ As proposed by the finance minister in Budget Speech of 2023, that wherever the words and brackets “the Commissioner (Appeals)”, the words and brackets “the Joint Commissioner (Appeals) or the Commissioner (Appeals)” shall be substituted.
- ▶ New post of Joint/Additional Commissioner (Appeals) created; 100 new Joint Commissioners to be deployed to reduce pending appeals.
- ▶ Responsible for disposal of small appeals.
- ▶ The power granted to commissioner(appeal) is also extended to Joint commissioner of Income Tax (Appeal).



Proposed Amendments

- ▶ As proposed by the finance minister in Budget Speech of 2023, that wherever the words and brackets “the Commissioner (Appeals)”, the words and brackets “the Joint Commissioner (Appeals) or the Commissioner (Appeals)” shall be substituted.
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