

# Chapter 6 :

# Appeals

## Chapter Index

Section details	Pg
Basic of Appeal	6.1
Sec 246A Appeals to CIT(A)	6.2
Sec 248 Appeal by a person denying liability to deduct tax in certain cases	6.3
Sec 249 Form of appeal & limitation	6.3
Sec 268 Exclusion of Time Taken for Copy	6.5
Sec 220(6) Stay of Demand	6.5
Sec 250 Procedure in Appeal	6.5
Power of CIT(A) to admit Additional Evidence	6.7
Sec 251 procedure of CIT(A)	6.8
Disposal of Appeal by CIT(A)	6.9
Stay of Demand	6.9
Income tax Appellate Tribunal (ITAT)	6.10
Sec 252 Constitution of ITAT	6.10
Sec 253 Appeals to the Appellate Tribunal	6.11
Sec 254 Orders of Appellate Tribunal	6.13
Sec 255 Procedure of Appellate Tribunal	6.15
Sec 260A Appeal to High Court	6.16
Sec 260B Case before High Court to be heard by not less than two judges	6.17
Sec 260 Effect to decision of HC/SC	6.18
Sec 261 Appeal to the Supreme Court	6.18
Sec 262 Hearing before Supreme Court	6.18
Sec 268A Filing of Appeal by Income Tax Authority	6.18
Relevant Case Law	6.19
Multiple Choice Questions	6.24
For Your Practice - Solved Questions	6.25
Know your Exams - Unsolved Questions	6.27

## Amendment Index

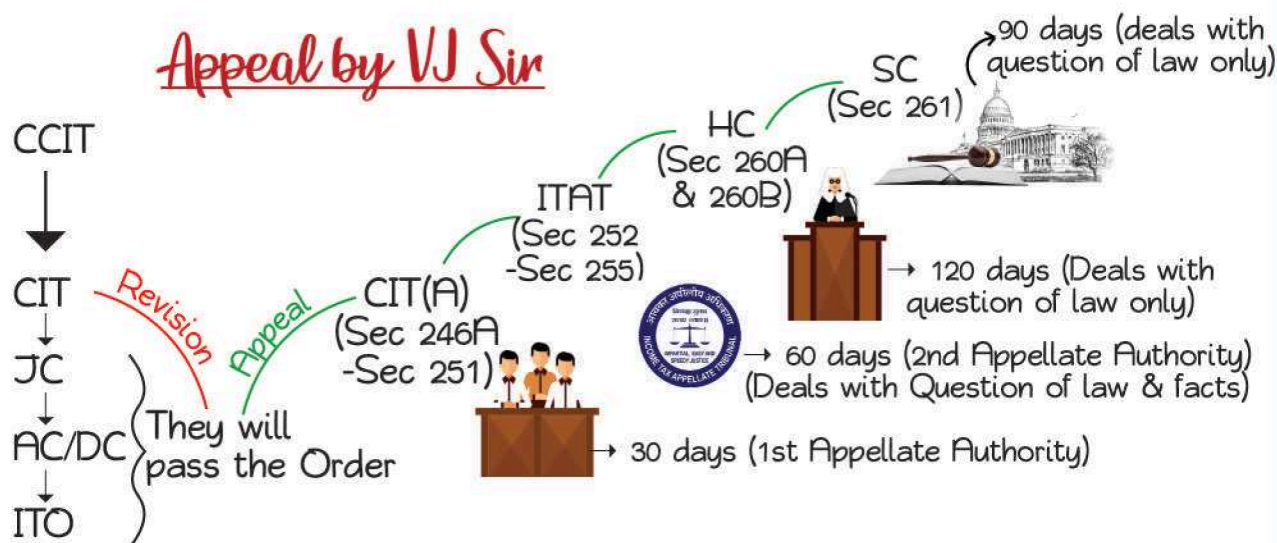
Section details	Pg
Sec 250 Procedure in Appeal	6.5
Sec 253 Appeals to the Appellate Tribunal	6.11
Sec 254 Orders of Appellate Tribunal	6.13

## 6. APPEALS

Space for Important Points / Notes

## 6. APPEALS

### Appeal by VJ Sir



### Practical Aspect

Sections	Time Limit	Authority
246A-251	30 days	CIT [A]
252-251	60 days	ITAT
260A-260B	120 days	HC
261-262	90 days	SC

### Basic of Appeal

<u>Non Appealable Orders</u>	a) Order levying Interest u/s 234A/B/C b) order rejecting revision u/s 264 c) Order of AAR d) Order of Settlement Commission. e) order of ITAT on question of Fact.
<u>Other Facts</u>	a) Appeal can be withdrawn before date of first Hearing b) One can go only through Hierarchy i.e. one cannot jump the authority.

## 6. APPEALS

Appeals			
IMPORTANT		NOT SO IMPORTANT	OMITTED
246A	Appealable Order	248	Person denying Liability
250	Procedure of Appeal	249	Form of Appeal
251	Power of CIT(A)	252	ITAT
253	Appealable order before ITAT	252A	Qualifications
254	Power of ITAT	255	Procedure of ITAT
		260A&B	HC
		261	SC

### Sec 246A Appeals to CIT (Appeals).

An Assessee/Deductor (or Collector) aggrieved by any of the following orders of AO may appeal to the Commissioner (Appeals) against such orders –

- 1) Order passed against the taxpayer in a case where the taxpayer denies liability to be assessed under Income Tax Act.
- 2) Intimation issued u/s 143(1) where adjustments have been made in income offered to tax in ROI. And Assessee objects to making of adjustments.
- 3) Intimation issued u/s 200A(1)/206CB (1) where adjustments are made in the filed statement. And Deductor/Collector objects to making of adjustments.
- 4) Assessment order passed u/s 143(3)/144/147/153A except in case of an order passed in pursuance of Dispute Resolution Panel or an order u/s 144BA (12)
- 5) Order passed by a JCIT u/s 115VP (3)(ii) refusing to approve option for tonnage-tax scheme to qualifying shipping companies.
- 6) Assessment/reassessment order passed u/s 92CD (3). [Adv. pricing agreement]
- 7) Rectification order passed u/s 154/155
- 8) Order passed u/s 163 treating taxpayer as agent of NR
- 9) Order passed u/s 170(2)/(3) in case of succession of business otherwise than death.
- 10) Order passed u/s 171 w.r.t assessment after partition of HUF
- 11) Order passed u/s 201/206C(6A) in consequence of failure to deduct or pay TDS.
- 12) Order determining refund passed under section 237.
- 13) Order imposing penalty

### Sec 248 Appeal by a person denying liability to deduct tax in certain cases

Where under an agreement or other arrangement, the tax deductible on any income, other than interest, u/s 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

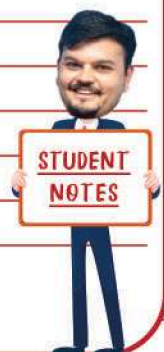
### Sec 249 Form of appeal and limitation.

Sec 249(2) & 249(3) - Time limit for presenting an Appeal  
 Appeal should be presented within 30 days of the following date:

Cases	30 days from
Where the appeal relates to any assessment or penalty	The date of service of notice of demand
Where appeal is u/s 248, i.e. appeal by a person denying liability to deduct tax u/s 195	The date of payment of tax.
In any other case	The date on which intimation of the order sought to be appealed against is served.

The CIT(A) may admit belated application on sufficient cause being shown. Application should be filed with Form No. 35 (i.e., form of appeal).

If appeal is not admitted for late submission, no appeal can be preferred against such refusal. The only remedy is that assessee can move an application u/s 264 to the Commissioner of Income Tax for revision of order of AO.



## 6. APPEALS

### Sec 249(4) - Pre Deposit of Tax

where return has been filed	Assessee has paid tax due on income returned by him
where no return has been filed by the assessee	The assessee has paid an amount equal to amount of advance tax which was payable by him, However CIT(A) may grant exemption on the basis of merits of the cases.

Proviso - Where no return has been furnished, the CIT(A) on an application made by the assessee may exempt the assessee from the condition of payment as stated in case 2 above for good and sufficient reasons to be recorded in writing.

**Note: No Interest u/s 234A, B, C and 140A is payable. Only the tax amount is to be paid.**

### Sec 249(1) - Form & Fees

Following documents are required in duplicate for filing an appeal to CIT(A):

- a. Form no. 35 (As prescribed in the Income Tax Rules)
- b. Memorandum of appeal;
- c. Statement of facts
- d. Grounds of appeal
- e. Copy of the order appealed against; and
- f. Notice of demand, in original, if any
- g. Copy of Challan for the payment of prescribed fee.

Fees: An appeal made to the CIT (A) shall be accompanied by a fee of:

Conditions: if Total Income Computed By AO is -	Fees
i. ₹1,00,000 or less	₹250
ii. More than ₹1L but not more than ₹2L	₹500
iii. More than ₹2L.	₹1,000
iv. WHERE THE SUBJECT MATTER OF AN APPEAL IS NOT COVERED ABOVE	₹250

### Sec 268 Exclusion of Time Taken for Copy

As per section 268, in computing the period of limitation prescribed for filing an appeal or an application under the Income-tax Act, the day on which the order complained of was served, shall be excluded.

Section 268 also provides that if the notice of demand is served and the copy of order of AO is not served, then the time taken in obtaining the copy of the order shall be excluded from the period of limitation of filing an appeal/application.

### Sec 220(6) Stay of Demand

Section 220(6) provides that where an assessee has presented an appeal to CIT(A) u/s 246A, then the AO may in his discretion and subject to such conditions which he may impose, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even if the prescribed time period of 30 days for payment has expired, as long as such appeal remains undisposed off.

Notes :

- 1) No appeal is possible against the refusal of AO to grant the stay u/s 220(6).
- 2) The CIT (A) can grant stay of demand if A.O. has refused to grant the stay of demand. [Debasish Moulik (HC)]
- 3) The ITAT during pendency of appeal before it can grant the stay of demand.

### Sec 250 Procedure in Appeal

Hearing: The CIT (Appeals) shall fix a day & place for the hearing of appeal.

Notice: Notice of hearing shall be given to the appellant & the AO against whose order appeal has been filed.

Right of Attendance: The following shall have the right to be heard at the hearing of appeal: