

# INCOME TAX APPEALS BEFORE CIT AND ITAT & REVISION

By

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## Remedy to the Assessee

Rectification u/s 154

Appeal u/s 246A/254

Revision by CIT u/s  
264

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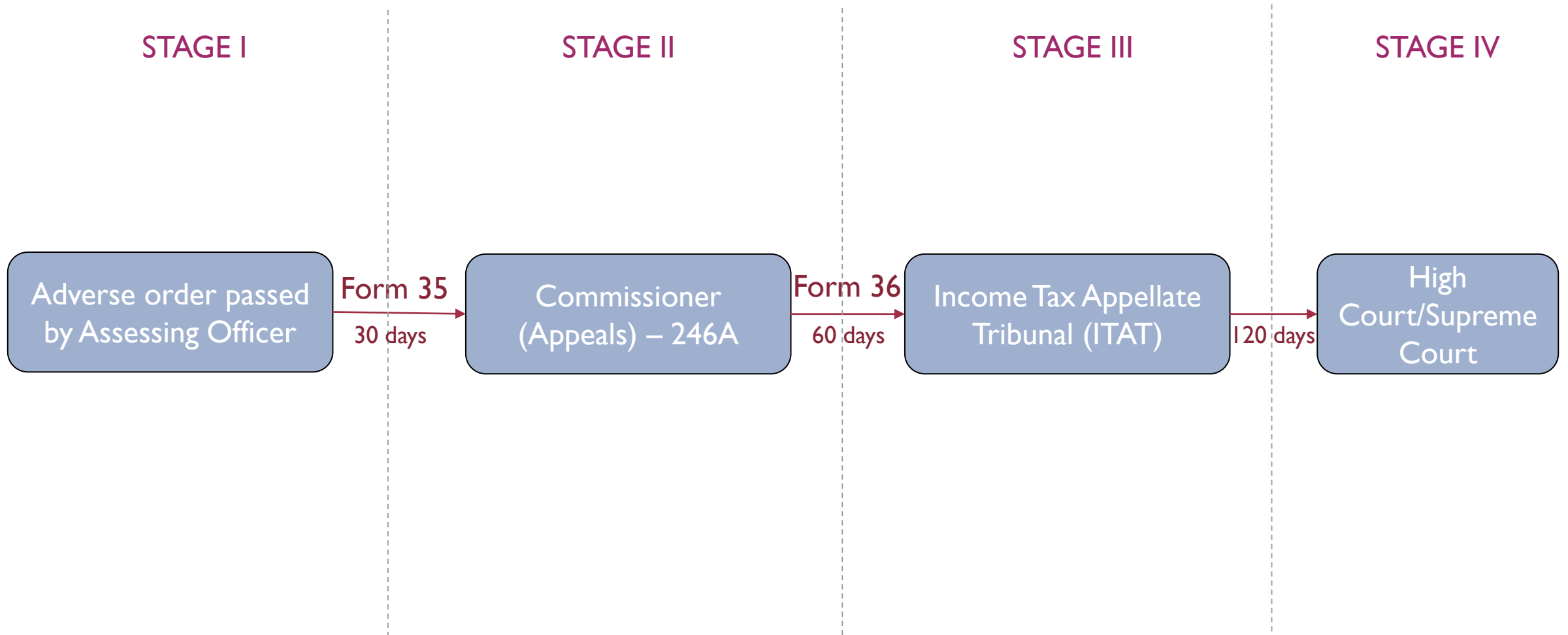
## Remedy to the Department

Rectification u/s 154

Reopening  
Assessment u/s 147

Revision by CIT u/s  
263

# INCOME TAX APPELLATE PROCESS



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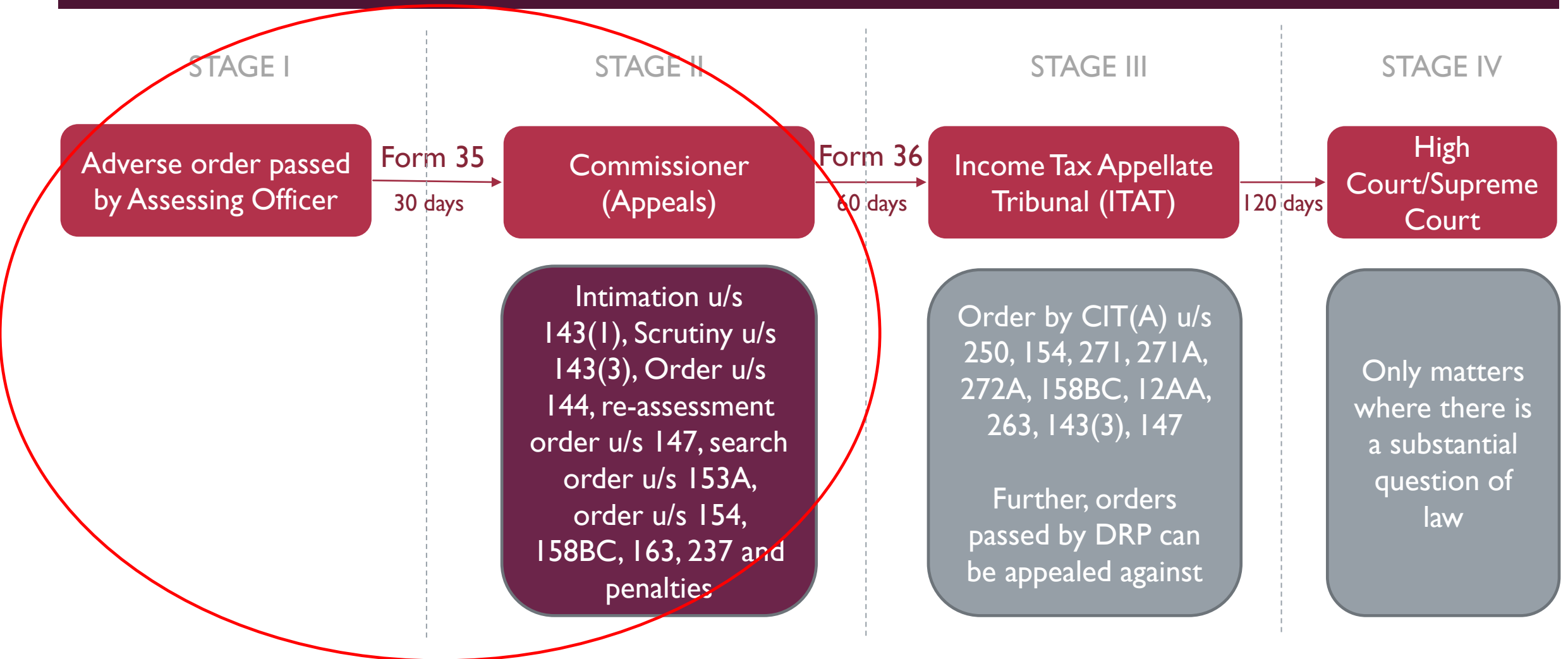
# WHAT IS AN APPEAL?

- 
- Statutory Right. Not an inherent right
  - Important to have a strategy for Appeal matters



## COMMISSIONER INCOME TAX (APPEALS)

# INCOME TAX APPELLATE PROCESS



# ORDERS APPELLABLE

- 246A(1) Any assessee aggrieved by any of the following orders
- (a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation.....
- (b) an order of assessment, re-assessment or re-computation under section 147 or section 150;
- (c) an order made under section 154 enhancing assessment
- (j) an order imposing a penalty under— 221, 271, 272
- (k), (l), (m), (n), (o), (p).....



# FORM OF APPEAL TO CIT(A) – SEC 249; RULES 45, 46



**1) Form 35 – E- Form**

**2) Statement of Facts**

**3) Grounds of Appeal**

**4) Challan of Fees Paid**





# **Key Matters of Discussion on Appeals**



# CONDONATION OF DELAY

Mela Ram & Sons (SC) - Power of  
condonation is discretionary

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# STRATEGISE YOUR APPEALS - COBRA EFFECT!





# POWER OF ENHANCEMENT

Ram Bahadur Hardutroy – Greater Interest of Society

CIT vs Kanpur Coal Syndicate (SC) – Can do anything. Power limitless.  
Shapoorji Pallonji vs CIT (SC) – Restrict to subject matter of appeal



# WITHDRAWAL OF APPEAL & EX- PARTE DISMISSAL



## ADDITIONAL EVIDENCE

&

## ADDITIONAL/ ALTERNATE GROUNDS

Goetze India (SC) – Against  
Assessee

**Favourable:**

Keshav Mills Case (SC)

National Thermal Power (SC)



Do it  
~~NOW!~~  
TOMORROW

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ADJOURNMENTS





# WRITTEN SUBMISSIONS

# PROCEEDINGS SHEET



A scenic landscape featuring a calm lake in the foreground, a single tree on the left, and snow-capped mountains in the background under a blue sky with scattered clouds.

ARE YOU LOOKING FOR  
**[PEACE OF MIND]?**

SHOULD ASSESSEE BUY PEACE OF MIND &  
SURRENDER INCOME?

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TURN  
ADVERSITY  
INTO  
OPPORTUNITY  
– FOCUS ON  
TECHNICAL  
POINTS







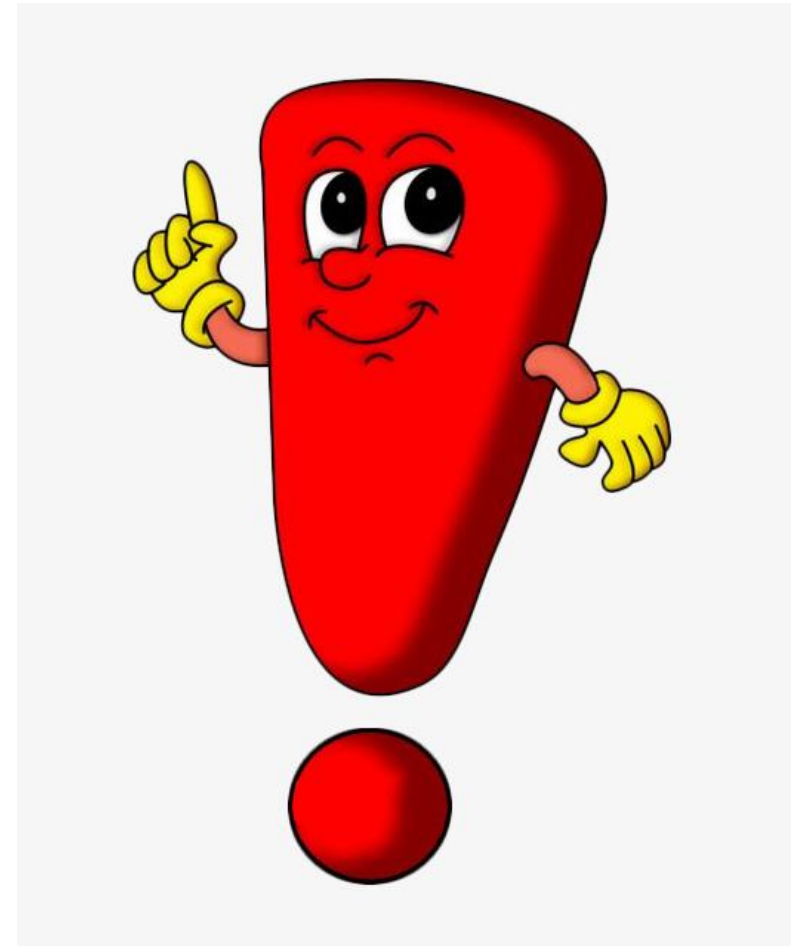
# ALL ABOUT STAY PETITIONS

- AFFIDAVIT ON STAMP PAPER
- CREATE RECORDS FOR HIGH COURT
- ASSESSEE WILL BE NOT IN DEFAULT
- PETITION FOR EARLY HEARING

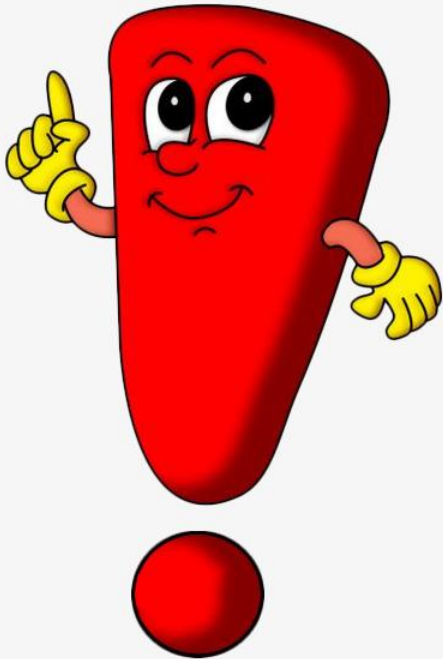
# IMPORTANT POINTS (1/2)

## Stay of Demand (Sec 220(6))

- AO discretion to allow stay.
- Considerations - Prima Facie case, Financial Condition and Other circumstances.
- If appeal disposed, stay vacates
- No appeal possible against refusal to grant stay. Only Writ Petition possible
- 20% of tax demanded to be paid for automatic stay – ***Dunlop India Case***



## IMPORTANT POINTS (2/2)



### **Condonation of Delay (Sec 249(3))**

- If CIT is satisfied there is sufficient cause, he may condone delay. If CIT refuses to condone delay, assessee may file an appeal against such refusal (Mela Ram & Sons vs CIT)

### **Additional/New Evidence (Rule 46A)**

- Petition for admitting new evidence must be filed.
- AO given a chance to review the same



# POWERS OF CIT(A)

- Power to conduct further inquiries
- Cure a defect i.e. irregularity in procedure
- Power to admit additional evidence/ground (Sec 250(4)/(5)) – **Keshav Mills 56 ITR 365 (SC)**
- Power to condone a delay – **Mela Ram and Sons (SC)**
- Power to enhance, reduce, confirm. Does not have power to set-aside and remand - **Kanpur Coal Syndicate 53 ITR 225 (SC); Narrondas Manordas 31 ITR 909 (Bom)**
- Power to levy penalty and stay recovery and Power to set-off refund against arrears





## HELPFUL TIPS

- What if Stay is Denied? What should Assessee do?
- Should an Assessee 'Buy Peace'/surrender income? Right to appeal still exists? No principle of Estoppel in Revenue Proceedings
- Maintaining Proceedings Sheet

# PROCEDURE – CIT(A) – SEC 250

## Procedure of Appeal (Sec 250)

- Appellate authority has power to adjourn the appeal
- CIT may direct AO to make further enquires
- May allow Appellant to go into ground of appeal not mentioned if satisfied such omission was not wilfull
- Order of disposal MUST BE IN WRITING with points of determination and reason
- Order passed will be communicated to Assessee, AO and CIT
- Sec 250(6A) provides that in every appeal, CIT(A) should try to hear and decide the same within 1 year from end of FY of the year of filing the appeal

**“FORM NO. 35**

(See rule 45)

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

<b>Personal Information</b>	First Name	Middle Name	Last Name or Name of Entity	PAN
				TAN (if available)
	Flat/ Door/ Block No.		Name of Premises/ Building/ Village	Road/ Street/ Post Office
	Area/ Locality		Town/City/District	State (Select)
	Country (Select)	Pin Code	Phone No. with STD code/ Mobile No.	Email Address  Whether notices/ communication may be sent on email? Yes/ No
<b>Order against which Appeal is filed</b>	1	Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant		
		Assessment Year		
		Financial Year		
	2	Details of the order appealed against		
	a	Section and sub-section of the Income-tax Act, 1961		
	b	Date of Order		
	c	Date of service of Order / Notice of Demand		
	3	Income-tax Authority passing the order appealed against		
<b>Pending Appeal</b>	4	Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellant with any Commissioner (Appeals)		
		Yes/ No		
	4.1	If reply to 4 is Yes, then give following details.-		
	a	Commissioner (Appeals), with whom the appeal is pending		
	b	Appeal No. and date of filing of appeal		
	c	Assessment year/ financial year in connection with which the appeal has been preferred		
	d	Income-tax Authority passing the order appealed against		
	e	Section and sub-section of the Income-tax Act, 1961, under which the order appealed against has been passed		
	f	Date of such Order		

Details of Taxes paid	8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full			Yes/No/ Not Applicable												
	8.1	If reply to 8 is Yes, then enter details of return and taxes paid															
		a	Acknowledgement number														
		b	Date of filing														
		c	Total tax paid														
	9	Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid			Yes/No/ Not Applicable												
9.1	If reply to 9 is Yes, then enter details Tax Payments <table border="1" style="width: 100%;"> <tr> <th>BSR Code</th> <th>Date of payment</th> <th>Sl. No.</th> <th>Amount</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td>Total</td> <td> </td> <td> </td> <td> </td> </tr> </table>				BSR Code	Date of payment	Sl. No.	Amount					Total				
BSR Code	Date of payment	Sl. No.	Amount														
Total																	
	10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1) <table border="1" style="width: 100%;"> <tr> <th>BSR Code</th> <th>Date of payment</th> <th>Sl. No.</th> <th>Amount</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>				BSR Code	Date of payment	Sl. No.	Amount								
	BSR Code	Date of payment	Sl. No.	Amount													
Statement of facts, Grounds of Appeal and additional evidence	11	<b>Statement of Facts</b> Facts of the case in brief (not exceeding 1000 words) List of documentary evidence relied upon															
	12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of rule 46A			Yes / No												
	12.1	If reply to 12 is Yes, furnish the list of such documentary evidence															
	13	<b>Grounds of Appeal</b> (each ground not exceeding 100 words)															
		1.															
		2.															
		3.															
	Appeal filing details	14	Whether there is delay in filing appeal			Yes/ No											
15		If reply to 13 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)															
16		Details of Appeal Fees Paid <table border="1" style="width: 100%;"> <tr> <th>BSR Code</th> <th>Date of payment</th> <th>Sl. No.</th> <th>Amount</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>				BSR Code	Date of payment	Sl. No.	Amount								
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## IMPORTANT DECISIONS

Strict rules of evidence not applicable – (**Mriganka Mohan Sur vs CIT (1979) 120 ITR 520**)

Procedural irregularity does not affect maintainability of appeal – eg Wrong signature, memo not in proper format etc – **CIT vs Calcutta Discount Co Ltd (1973) – 91 ITR 8 (SC)**

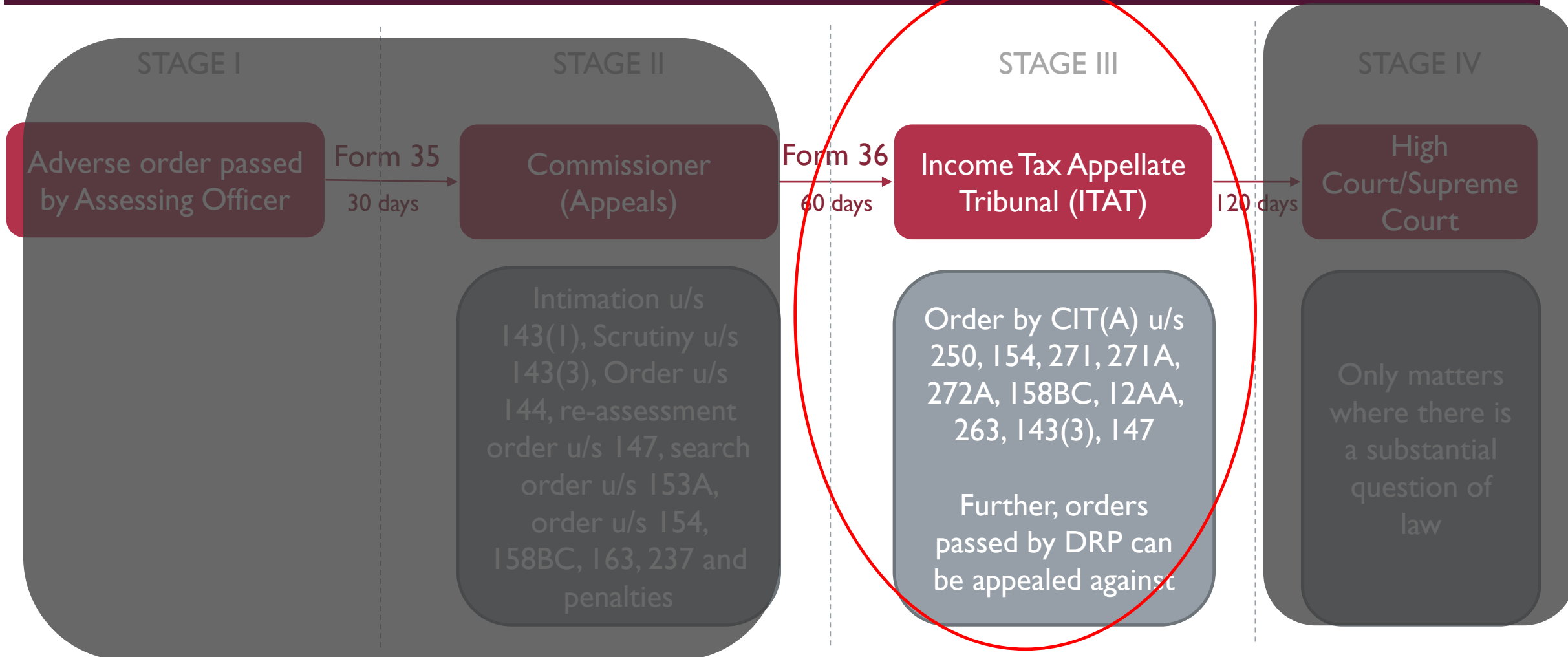
No RIGHT to withdraw appeal – (**CIT vs Nawab Shah Khan (1938)**) – The position of law is because of the special position of first appellate authority whom duty is cast not in interest of assessee but in the larger interest of revenue



# APPEAL TO INCOME TAX APPELLATE TRIBUNAL



# INCOME TAX APPELLATE PROCESS





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PAYMENT OF  
20% OF  
DEMAND FOR  
ADMITTING  
STAY AT ITAT

# FORM OF APPEAL

- Form 36
- Grounds of Appeal
- E-Payment Challan – Pay only in ‘Others’
- Order of CIT(A)/Order appealed against
- Form 35, Statement of Facts and Grounds of Appeal
- Assessment order of AO





# ITAT PROCEEDINGS





# COURT CRAFT

# PRACTICAL PROCEDURE – ITAT

- Must salute the ITAT members (Judges) by bowing to them
- Must refer to them as Your Honour or Your Lordship
- Only specified persons u/s 288 may appear
- Paper book must be prepared and serially numbered
- The first page must have an index and must be certified and signed by the AR/Assessee
- Must always carry 4 copies of papers/charts or decisions being submitted
- Must be courteous and use the respectful language of the Court



# POWERS OF ITAT

- Pass orders after giving both parties opportunity to be heard (Sec 254(1))
- May within 6 months of issuing order, rectify mistake apparent on record if brought to its notice (Sec 254(2))
- Decide appeal within 4 years from end of FY appeal is filed (Sec 254(2A))
- Has power to issue stay order (Proviso to Sec 254(2A))
- However, ITAT cannot enhance the income from what was originally determined.
- Power to admit ground at ITAT level itself, no need remand report – ***National Thermal Power (SC)***



## MONETARY LIMITS BY CBDT

I-T appeals before...	2018 limit	2019 limit
ITAT	₹20L	₹50L
HC	₹50L	₹1cr
SC	₹1cr	₹2cr



PAPERBOOK





impossible

RECTIFICATION OF MISTAKES - TRIBUNAL



# JURISDICTIONAL DECISIONS



## POINTS TO REMEMBER

### **Affidavit and Grounds Not Taken in Appeal**

- Where a fact is contrary to the record or which cannot be borne out by evidence, it shall be stated clearly in an affidavit
- Appellant shall stick to grounds as per Grounds of Appeal but at leave of ITAT can explore new grounds

### **Dress Code**

- Men: Suit with a tie or buttoned up coat over a pant or national dress. Colour of the coat should preferably be black
- Women: Black coat over while or any other sober coloured saree



## IMPORTANT QUESTIONS??

- What if order of the Tribunal is wrong?  
Application u/s 254(2)
- Bombay Tribunal gave different judgement  
for same issue. What do I do?





# PROCEDURE FOR APPEAL AT A GLANCE

Details	246A	254	260A	261
Authority	CIT(A)	ITAT	High Court	Supreme Court
Time Limit for appeal	30 days from receipt of order	60 days from CIT(A) order	120 days from ITAT order	90 days from HC order
Time limit for disposal	1 year from end of FY	4 years from end of FY	Court procedures	Court procedures
Format	Form 35	Form 36	Court procedures	Court procedures
Fees to be paid (T.I.Total Income)	T.I. is < Rs.1 lac – Rs.250 Upto Rs.2 lacs – Rs.500 >Rs. 2 lacs – Rs.1000 Others – Rs.250	<Rs.1 lac – Rs.500 <Rs.2 lac – Rs.1500 >2 lac – 1% of assessed income or Rs.10,000 – whichever is lower Stay Demand – Rs.500		
Stay of Demand	Possible	Possible	Possible	Possible
Minimum tax to be paid for filing appeal				



# REVISION OF ORDERS U/S 263 AND 264

# REVISION U/S 263

- CIT can exercise powers of revising an order u/s 263 if the following conditions are fulfilled:

Order is **erroneous** AND **prejudicial**  
to the interest of the **revenue**.

Revision is done **2 years** from end of  
FY when order is passed

Principal CIT or CIT  
initiate

Opportunity  
to be heard

All records  
available to  
CIT

## REVISION U/S 263

- Expln 2 to 263(1) w.e.f 1/6/15 – Prejudicial to revenue if
  - a) Passed without making inquiries which should have been made
  - b) Not made in accordance with order, circular or decision/direction
- “Record” means record at the time available by the Pr.CIT (not at the time of assessment)
- Revision to be done within 2 years from end of FY order was passed
- If Appeal decided in favour of Assessee, matter of appeal cannot be considered for revision

## IMPORTANT DECISIONS – SEC 263

- U/s 263 CIT can revise matters not considered and decided in appeal by CIT(A) – ***CIT vs Span International (2004)***; however, no portion of the order u/s 264 shall be revised if there is an appeal pending before the Appellate Authority, even though it may relate to other portion of order – ***Gnanasundara Nayagar vs CIT (1961)***
- When proceedings u/s 147 initiated, revision u/s 263 cannot be initiated (***Inductotherm India vs CIT – 2007***). Similarly, when proceedings u/s 154 have been initiated sec. 263 cannot be invoked – ***CIT vs Ralson Industries 2007***
- If two views possible, CIT cannot invoke sec 263 because AO has adopted another view from his (***CIT vs Hindustan Coca Cola Beverages Pt Ltd – 2011***)
- Powers u/s 263 cannot be invoked unless proved that AO order is erroneous **AND** has caused loss to revenue. ***CIT vs Chambal Fertilisers and Chemicals - 2014***

## IMPORTANT POINTS – SEC 263

*What if the matter has been decided on Appeal? Can 263 revision be done on that matter also?*

*Where basis of invoking 263 is different from basis of re-assessment, then 2 years from end of FY (u/s 263) should be reckoned from original assmt order and not order u/s 147 – **Alagendran Finance (2007) (293 ITR 1) (SC)**.*



## REVISION U/S 264 – RELIEF TO ASSESSEE

- CIT can exercise powers of revising an order u/s 264 on own motion or on application by Assessee
- Assessee to forgo benefit of Appeal
- Prin. CIT nor CIT can revise order it has been made more than 1 year prior to that date
- Application by assessee must be made within **1 year from date on which order was communicated**. However, Commissioner may condone the delay
- Application to have fee of Rs.500/-
- Not Appellable to the ITAT. Has to file a writ petition if order passed by CIT is perverse or Principles of Natural Justice are violated



## SOME INTERESTING DECISIONS

## IMPORTANT POINTS – I

***Dev Milk Foods Pvt Ltd. Vs Addnl CIT (ITA 6767/Del/2019)*** – A case marked limited scrutiny cannot be taken for complete scrutiny unless AO forms reasonable view. This is to prevent roving enquires, ensure objectivity, enforce checks and balances on AO powers.

Mere assertion by AO of non-disclosure not sufficient reason for re-opening u/s 147. AO has to specifically mention points – ***Anand Developers vs ACIT (WP.17/2020 –Bom HC)***

***Salem Sree Ramvilas Chit Fund Co. vs DCIT (Mad HC)*** - During E-Assessment adequate opportunity should be given to Assessee

## IMPORTANT POINTS – II

Payment for Higher Education of Children of Directors – Is it allowable if they're employees of the company? – ***Kostub Investment Ltd vs CIT (2014)*** says if Bond exists and scheme exists for employees, cannot be disallowed merely because son/daughter.

Wife travels with Director abroad on Foreign Tour for Budget Conference he is attending. Can it be allowed? – In ***CIT vs Luwa India (2012) (205 Taxmann 342 – Karn HC)*** it was held for purposes business allowance.

Can you claim expenses pertaining giving memento to Directors? – ***Aluminium Corp of India vs CIT (1972)(86 ITR 11 – SC)*** says yes, its for motivating them for better performance.

## IMPORTANT POINTS – III

What is Sale Consideration is lesser than 50C value? How much can I reinvest? – **Gouli Mahadevappa vs ITO – 256 ITR 90** says 50C value

Can you borrow and invest or should it be same money received as consideration? – **ITO vs KC Gopalan – 107 TM 591 (Kerala)** says you can borrow – As does **CIT vs Vasudevan Chetiar 234 ITR 705 (Mad)**, **CIT vs R Srinivasan 45 DTR 208 (Mad)**

Cost of plot also to be included for reinvestment u/s 54/54F – **Aryama Sundaram (Mad HC)**

Can Assessee invest in the name of Spouse? – **CIT v Natarajan (Mad HC)** says YES (also **Kamal Wahal case (Delhi)** says same )

## IMPORTANT POINTS –IV

Is reinvestment date considered to be as per 139(1) or 139(4)? – ***Saraswathy vs ITO, Alagappan Natarajan vs ITO, ITO vs KS Narasimhhan***

Is 2 apartments together 1 house or 2 houses? – ***CIT vs Gita Duggal*** says 1. Act says 1 house not 1 unit

Co-ownership will be a separate property – ***MJ Siwani vs CIT (SC)*** says if you have 50% ownership of 2 houses, it will be 2 houses not 1 house (i.e. 50% + 50%)



## IMPORTANT POINTS –V

Sale Agreement – 13/08/2010.

Possession handing over – 15/10/2011. Sale Deed – 03/07/2012.

Reinvestment u/s 54F on 22/04/2010 – Is this allowable u/s 54 or 54F?

***Kishorbhai Patel v ITO (Guj HC)*** says YES. Extinguishment of rights happens on 13/08/2010

For 54/54F – Can construction start prior to transfer of Capital Asset. Can Exemption be claimed? – ***CIT vs JR Subramanya Bhat*** says yes

Money spent towards renovation and remodelling flat – Can it be claimed u/s 54F? – ***Nayana Kirit Parikh vs ACIT (Mumbai ITAT)*** says Yes

## IMPORTANT POINTS – VI

Due to litigation consideration placed in escrow account. After litigation finished, in year of receipt, reinvested in 54EC bonds. Can still claim 54EC deduction – ***Pr CIT vs Mahipinder Singh Sandhu – 416 ITR 175 P&H***

Payment for release of share in house property from a co-owner. Will be it be acquisition of House Property – ***CIT v TN Aravinda Reddy (SC) 120 ITR 46 (1979)*** - says yes

***54F says Residential House – Do they mean USE or do they mean NATURE of the Asset? – Hyd ITAT (N Revati vs ITO) vs Delhi ITAT (Sanjeev Puri vs DCIT), recently Navin Jolly vs ITO (Karn HC)(ITA No.320 of 2011)***

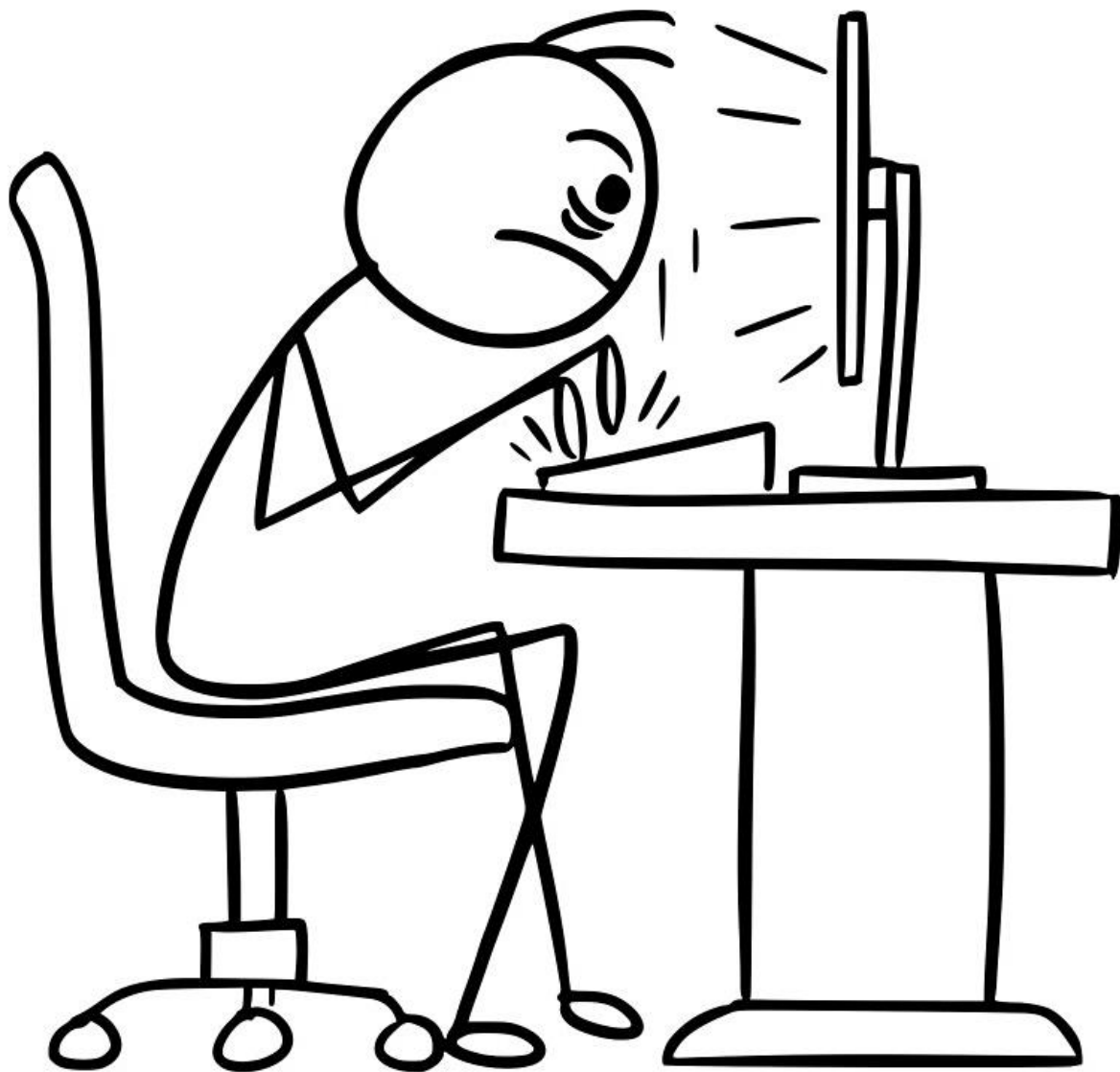
## IMPORTANT POINTS –VII

Delay by builder, beyond 3 years, in completing the construction of property. Still eligible for 54 or 54F? – ***CIT vs Girish Raghav 69 TM 95***

Taxation of Sale of Life Interest – Taxable in both life-tenant and person who inherits it after – ***K Ramachandra Chettiar (Madras)(1983)***

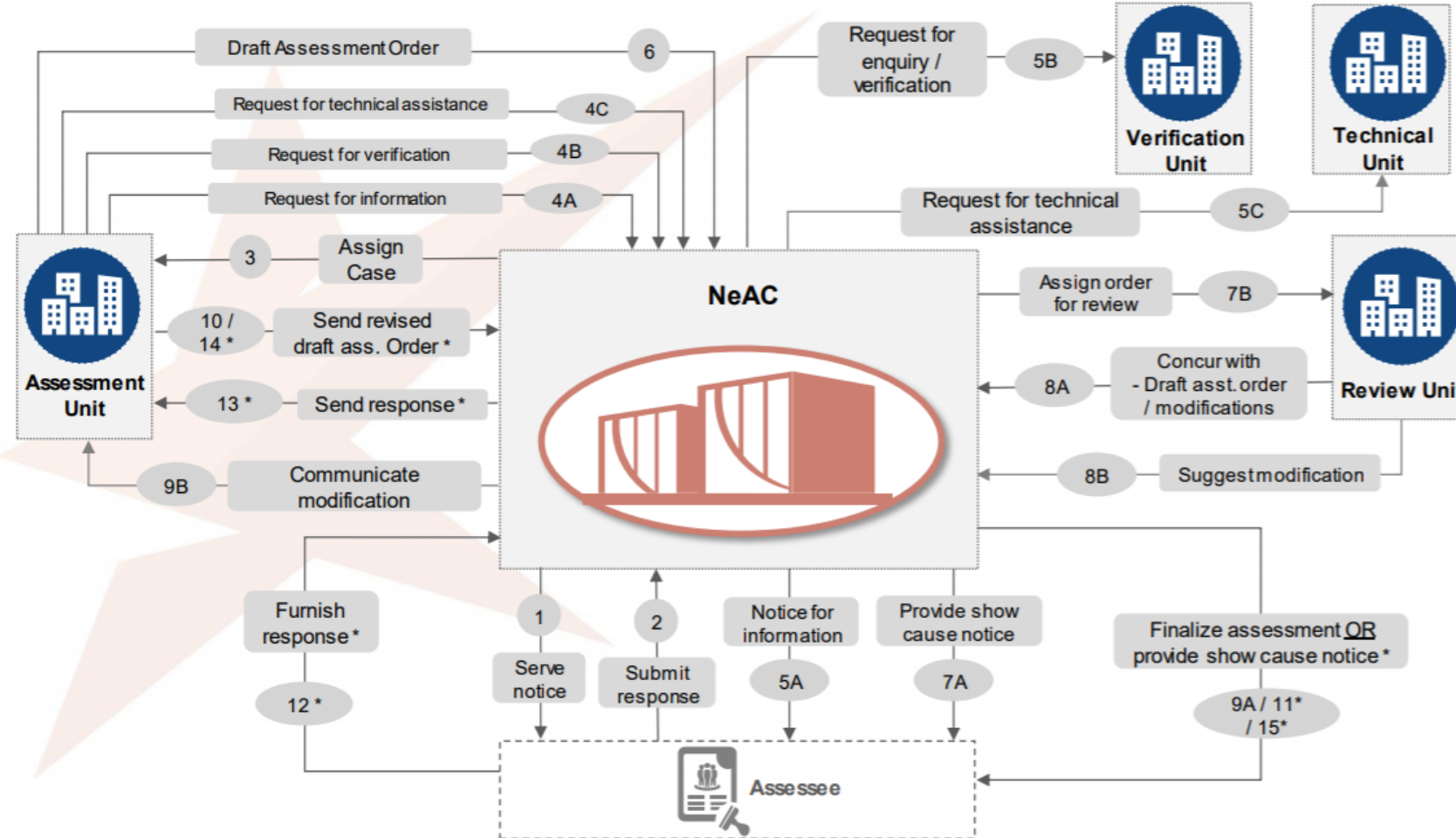
Capital gains arises in the hands of Owner, not GPA holder – ***Veerannagiri Gopal Reddy vs ITO (2019 – Hyd Tribunal). Facts*** – Original owners entered into GPA in 2007. GPA mentions no consideration but original owners admit sale consideration of 8.4 lacs in 2007 return.

In 2014, GPA holder registers property in name of his daughter. Dept wants to Tax him for Capital Gains. He takes stand that his daughter only compensated original owners in 2007.



## E-ASSESSMENT

# E-Assessment Procedure – At a glance



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# THANK YOU!

STILL HAVE ANY DOUBTS?

LETS DISCUSS!

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