



From Assessment to Tribunal: Income Tax Appeals in Practice

A practitioner handbook on CIT(A), DRP, ITAT and High Court appeals-forms, stay, evidence and litigated additions.

LawWorld Editing Team

Creator: LawWorld

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Preface

Every contested assessment eventually becomes a question of forum, form and timing. This handbook is written for advocates, in-house tax counsel and serious students who must move a dispute from the Assessing Officer's order through the Commissioner (Appeals) or the Dispute Resolution Panel, into the Income Tax Appellate Tribunal, and-where a substantial question of law arises-into the High Court under Section 260A. It treats the appellate ladder as a single continuous practice problem rather than a set of disconnected statutes.

The chapters follow the life-cycle of an appeal. Early chapters fix jurisdiction, limitation and the architecture of Form 35 and DRP objections. Mid-book chapters turn to the tools that decide outcomes on the ground: Rule 46A additional evidence, stay-of-demand applications read with CBDT instructions, and the additions that generate the bulk of first-appeal and Tribunal litigation-cash credits, expenditure disallowances, alleged bogus purchases, capital-versus-revenue disputes, and reassessment after the Section 148A regime. Later chapters supply model grounds, a paper-book checklist, penalty-appeal practice and a ready reckoner of limitation periods and fees.

Templates and checklists are drafted so they can be adapted to facts without becoming rote. Circular and instruction references are cross-linked to the stay and recovery chapters so that written submissions speak the language the Department and the Tribunal expect. The register is plain and practitioner-facing: what must be pleaded, what must be proved, and what must not be repeated at the next forum.

Use the book as a desk companion when the assessment order lands, when the demand notice follows, and when the paper book is bound for the Tribunal. The law stated is the Income-tax Act, 1961 and the Income-tax Rules, 1962 as they govern appeals in ordinary practice across India.



01

The Appellate Ladder: Orientation from Assessment to High Court

Forums, orders appealable, and how the path forks

The appellate map at a glance

Every contested assessment or penalty order forces an immediate forum choice. The Income-tax Act builds a ladder: first appeal to the Commissioner (Appeals) or, for eligible cases, objections to the Dispute Resolution Panel; second appeal to the Income Tax Appellate Tribunal; and, on a substantial question of law, appeal to the High Court. Getting the first step wrong wastes limitation and can lock the client out of the correct remedy.

Appealable order

An order expressly listed in Section 246A (or the parallel ITAT entry points in Section 253), or an order against which the assessee denies liability to be assessed under the Act, so that a statutory appeal lies to the named forum.

Section 246A is the primary catalogue for first appeals. It covers assessment orders under Sections 143(3), 144, 147 and kindred provisions, penalty orders, and a wide residual limb: an order against the assessee where the assessee **denies liability to be assessed under this Act**. That limb is not confined to regular assessment. In [LAWWORLD 2019 SC 1165](#), the Supreme Court held the expression comprehensive enough to cover determination of buy-back tax under Section 115QA. Orders under Section 201(1) treating a person as assessee-in-default are likewise appealable; interest under Section 201(1A) rides with that order rather than standing alone.

Appealability of determination under Section 115QA

Supreme Court, 2019

Sections 246(1)(a) and 246A(1)(a) cover any order where the assessee denies liability under the Act; not limited to ss. 143/144. Determination or quantification under s. 115QA is appealable.

LawWorld ID: LAWWORLD 2019 SC 1165

Appealability of order under Section 201

High Court of Karnataka, 2000

Appeal lies from the s. 201(1) default order, not merely from interest under s. 201(1A). Section 246 makes s. 201 appealable; s. 248 is a different, narrower track.

LawWorld ID: LAWWORLD 2000 KAR 1134

First-tier forks: CIT(A) versus DRP

For most assesseees the first rung is the Commissioner (Appeals) under Section 246A. A separate track exists under **Section 144C** for an eligible assessee -principally a person in whose case the Transfer Pricing Officer has made variations, and certain foreign companies. The Assessing Officer must first pass a **draft order**. The assessee may file objections before the Dispute Resolution Panel within the statutory window. DRP directions bind the AO, who then passes the final order. That final order is appealed **directly to the ITAT**, not to the CIT(A).

Eligible assessee (s. 144C)

An assessee for whom the AO proposes a draft assessment order under Section 144C-typically where a TPO variation is proposed, or as otherwise specified-so that objections lie to the DRP instead of a first appeal to the CIT(A) against the draft.

WARNING

Do not dual-track the draft order

Once the DRP route is open and chosen, the CIT(A) is not the forum for the same draft. Filing Form 35 against a draft 144C order, or missing DRP objections and then treating the final order as an ordinary CIT(A) matter, are classic jurisdiction traps. Later chapters detail each route; here the rule is simple: identify eligibility **before** the limitation clock on objections runs out.

Penalty orders follow the ordinary first-appeal path under Section 246A unless a special provision says otherwise. Quantum and penalty remain separate appeals even when they share facts; strategy alignment is for later chapters.

ITAT, High Court, and the edges of revision and writ

Section 253 opens ITAT jurisdiction against orders of the CIT(A), against final assessment orders passed in pursuance of DRP directions, and against specified orders of the Principal Commissioner or Commissioner (including revision under Section 263). Cross-objections under Section 253(4) are available only in the appeal settings the statute names-not, for example, in an assessee's appeal against a pure Section 263 order.

Scope of cross-objections under Section 253(4)

High Court of Karnataka, 2016

Revenue cross-objections are not maintainable in an assessee appeal against a s. 263 revisional order; s. 253(4) is confined to the forums it lists (including DRP-linked AO appeals).

LawWorld ID: LAWWORLD 2016 KAR 015

From the Tribunal, **Section 260A** takes the dispute to the High Court only on a **substantial question of law**. An order under Section 254(2) rectifying an appellate order is itself treated as passed "in appeal" and can support a 260A challenge. Erroneous exercise of Tribunal discretion-self-misdirection, irrelevant considerations, or manifest injustice-can amount to an error of law.

Section 260A appeal from order under Section 254(2)

High Court of Karnataka, 2002

A Tribunal order on a s. 254(2) rectification application is an order made in appeal for s. 260A; prefer the broader view favouring the right of appeal when two readings are possible.

LawWorld ID: LAWWORLD 2002 KAR 0718

Discretionary Tribunal orders and Section 260A

High Court of Karnataka, 2005

260A lies only on law, but vitiated discretion (unreasonableness, irrelevant factors, manifest injustice) is an error of law and is appealable.

LawWorld ID: LAWWORLD 2005 KAR 0414

Appeal, revision and writ-high-level contrast

- **Appeal** - statutory right to a higher tax forum (CIT(A)/DRP path, ITAT, High Court) on merits and jurisdiction within the Act's ladder.
- **Revision** - Commissioner-level power (e.g. ss. 263/264): not a substitute first appeal; s. 263 adverse orders are themselves appealable to the ITAT under s. 253.
- **Writ** - constitutional supervisory jurisdiction. Alternate efficacious appeal is the normal bar; writs are reserved for want of jurisdiction, breach of natural justice, or pure constitutional challenge-not routine merits.

Courts routinely decline writs where Section 253 appeal lies to the ITAT. Conversely, a genuine jurisdictional usurpation can still justify Article 226 even if an appeal exists. Penalty and quantum merits belong in the appellate hierarchy, not in a writ shortcut.

Writ refused where ITAT appeal available

High Court of Karnataka, 2017

Assessee bypassed s. 253 after CIT(A) order on remand; Court held adequate statutory remedy existed and refused to entertain the writ on merits.

LawWorld ID: LAWWORLD 2017 KAR 113

Writ maintainable on jurisdictional error

High Court of Karnataka, 2015

Alternate remedy is not an absolute bar; where the AO's jurisdiction itself is attacked (here, disregarding a s. 35(2AB) certificate), writ can be entertained.

LawWorld ID: LAWWORLD 2015 KAR 0412

Decision tree on receipt of the order

Use the following sequence the day the assessment, reassessment, penalty or default order is received. Do not draft grounds or forms here-only choose the forum and protect limitation.

Forum choice on receipt of order

1. **Identify the instrument** : final assessment/penalty/s. 201 order, **draft** order under s.

144C, CIT(A) order, DRP-based final order, s. 263 order, or ITAT order.

2. **If draft under s. 144C** and client is eligible: calendar DRP objection deadline; do **not** file CIT(A) against the draft.
3. **If ordinary assessment, reassessment, penalty or s. 201(1) order** : first appeal to **CIT(A) under s. 246A** (subject to any special exclusion).
4. **If final order after DRP directions , or CIT(A) order , or appealable Commissioner revision order** : appeal to **ITAT under s. 253** .
5. **If ITAT order** and a **substantial question of law** arises (including vitiated discretion or s. 254(2) outcomes): **s. 260A** to the High Court.
6. **Revision (s. 264)** is a discretionary alternate to first appeal in limited situations-not a parallel track after electing appeal on the same issues.
7. **Writ** only if the order is without jurisdiction, natural justice is denied, or a pure vires issue is raised-and after testing whether s. 246A/253 is efficacious.
8. **Diary limitation** for the chosen forum immediately; file protectively if forum is genuinely doubtful, then correct course.

Same-day practitioner checklist

- ☐ Stamp date of service/communication and compute limitation for every plausible forum.
- ☐ Flag s. 144C eligibility and whether the document is draft or final.
- ☐ List appealable heads (tax, interest, penalty) and whether denial-of-liability limb of s. 246A is needed.
- ☐ Separate quantum from penalty-each needs its own appeal decision.
- ☐ Note demand and stay posture for the stay chapter; do not defer forum choice while negotiating recovery.
- ☐ Avoid writ as first reflex when CIT(A) or ITAT is open on merits.

TIP

What this chapter deliberately left open

Form 35/36 drafting, condonation doctrine, stay tests, Rule 46A evidence, addition-specific grounds, and High Court question framing are covered in the chapters that follow. Master the ladder first; every later filing assumes this map.



02

First Appeal before the Commissioner (Appeals)

Jurisdiction, powers and the shape of the hearing

Jurisdiction and the DRP fork

The Commissioner (Appeals) is the ordinary first appellate authority for assessment and penalty orders that lie under the first-appeal route. Jurisdiction is attracted when the assessee is aggrieved by an appealable order and elects that path rather than any special route. Do not re-map the full ladder here; the practical question on receipt of the order is simply whether this matter was required to go to the Dispute Resolution Panel.

WARNING

DRP, not CIT(A)

Where the assessee is an eligible assessee facing a draft order under the special transfer-pricing or foreign-company route, objections belong before the DRP. Filing Form 35 against a draft order that should have gone to the DRP is a wrong-forum error. If that fork applies, stop and use the DRP chapter; do not treat CIT(A) as a substitute.

For every other appealable assessment or penalty order on the ordinary path, CIT(A) is the correct first forum. Confirm the order is appealable, compute limitation from communication or service, and file within time-or with a condonation application if delayed.

Powers: confirm, reduce, enhance or annul

In an appeal against an assessment, the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment. That is the statutory menu of outcomes. Enhancement is a live risk: the appellate authority may increase income or reduce loss on a point already in the assessment or on a new source, but only after notice and a real opportunity to the assessee. Annulment wipes the assessment; confirmation upholds it; reduction grants partial or full relief on the grounds pressed.

Plenary appellate power co-terminus with the Assessing Officer

LAWWORLD 1990 SC 093

Under the appellate power corresponding to Section 251(1)(a), the first appellate authority has plenary powers co-terminus with those of the Assessing Officer. The authority may do what the AO can do and may direct the AO to do what the AO failed to do. There is no general restriction on that power beyond express statutory limits. The assessment may be modified even on an additional ground not raised before the AO, subject to fair hearing.

Because the power is co-terminus, the Commissioner (Appeals) is not confined to the appellant's grounds in a narrow sense and may correct the assessment in either direction within express limits. Do not treat set-aside of the assessment with open remand as a routine disposal outcome on the statutory menu; the ordinary dispositions remain confirm, reduce, enhance or annul. Where directions to the AO are needed to complete what the AO failed to do, they rest on this plenary character and must still respect notice and hearing.

TIP

Guard against enhancement

Read every hearing notice for proposed enhancement or a new source. File a focused written reply with evidence. Silence can be treated as acceptance of the proposed increase.

Hearing under Section 250: notice, submissions and remand reports

Section 250 hearing

The statutory framework for disposal of the first appeal: notice of hearing, opportunity to be heard, power to adjourn, power to make further inquiry or remand to the Assessing Officer, and a reasoned order after considering the record, the grounds and any remand report.

Under the Section 250 framework the Commissioner (Appeals) fixes a hearing and issues notice. Attend on the date fixed or seek adjournment in writing with reasons before the date. The hearing is quasi-judicial: the authority must consider the grounds, the assessment record and the assessee's submissions, and must give a fair opportunity if enhancement or a new source is proposed.

File written submissions that track the grounds, attach the key evidence already on record, and answer any specific queries in the notice. Keep facts consistent with Form 35 so the same narrative can travel to the Tribunal. If additional evidence is needed, apply under the additional-evidence rule in a separate application; do not bury new documents inside general submissions without the required opportunity to the AO.

Remand report

A report called for from the Assessing Officer when the Commissioner (Appeals) sends specified issues or evidence back for verification or comment. The assessee must receive a copy and a chance to rebut before the appeal is decided.

When a remand report is called, watch the AO's comments carefully. File a rejoinder on facts and law; do not assume the Commissioner (Appeals) will reject an adverse remand report without your rebuttal. The final order should deal with the grounds, the submissions, the remand report and the rejoinder in reasoned form.

Section 250 hearing sequence

1. Notice of hearing issued with date and any specific issues or enhancement proposal
2. Appellant files written submissions and evidence schedule; seeks adjournment if truly needed

3. *Hearing conducted; queries raised and recorded*
4. *Optional remand to AO for verification; remand report furnished to appellant*
5. *Appellant files rejoinder to remand report*
6. *Reasoned order confirming, reducing, enhancing or annulling*

Online filing and service in practice

First appeals are filed electronically on the e-filing portal through the assessee's account. Upload the signed Form 35, the order appealed against, the grounds and statement of facts, power of attorney or authorisation, and the condonation application if any. Pay the prescribed fee online and download the acknowledgement with e-filing number; that number is the reference for all later correspondence.

After allotment, watch the portal and the registered email for hearing notices, remand reports and the appellate order. Service is increasingly system-driven; diary the portal and mail so limitation for the next step is not missed. Portal outage near the limitation deadline should be captured by screenshots and a helpdesk ticket to support condonation if filing slips.

CIT(A) filing and hearing checklist

- ☐ *Confirm the order is appealable on the ordinary path-not a DRP draft-order matter*
- ☐ *Compute limitation from communication or service; prepare condonation if late*
- ☐ *E-file Form 35 with order, facts, grounds, authorisation and fee; save acknowledgement*
- ☐ *Diary hearing notices; file written submissions aligned to grounds*
- ☐ *Respond fully to any enhancement or new-source notice*
- ☐ *On remand, obtain the report and file a rejoinder before disposal*
- ☐ *On receipt of the order, diary ITAT limitation immediately*

03

The **DRP** Route under Section 144C

Objections, directions and the bridge to ITAT

Eligible assessee and the draft order

eligible assessee

Under Section 144C, an eligible assessee is a person in whose case the Assessing Officer proposes a variation prejudicial to the assessee arising from a transfer-pricing order under Section 92CA, or a foreign company. Only such assessee receives a draft assessment order and may invoke the Dispute Resolution Panel.

Section 144C interrupts the ordinary assessment sequence. Where the Assessing Officer proposes any variation in the income or loss returned that is prejudicial to an **eligible assessee**, the AO must first forward a **draft order** rather than pass a final assessment. The draft order states the proposed additions, disallowances and the computation that would follow if the variations stand. No demand is raised at this stage; the draft is the trigger for the assessee's choice to object or to accept.

On receipt of the draft order the assessee has two paths. Acceptance-or silence-lets the AO complete the assessment on the draft lines. Filing objections engages the Dispute Resolution Panel (DRP), a collegium of three Principal Commissioners or Commissioners. The **DRP** route is available only against the draft; it is not a substitute forum for every assessment dispute.

NOTE

Who does not get the draft

Domestic assessee without a Section 92CA variation, and cases with no prejudicial variation at all, do not receive a Section 144C draft. Their first appeal, if any, lies to the CIT(A) under Section 246A in the ordinary course.

Objections: timeline, form and content

Section 144C objection timeline

1. AO forwards draft assessment order to the eligible assessee.
2. Assessee files objections to the **DRP** (and a copy to the AO) within **30 days** of receipt of the draft.
3. **DRP** may issue directions after considering objections, AO's remand response and, where granted, oral hearing-ordinarily within nine months from the end of the month in which objections were received.

4. AO passes the final assessment order in conformity with the DRP directions within one month from the end of the month in which directions are received.
5. Assessee (or the Principal Commissioner/Commissioner) may appeal the final order to the ITAT under Section 253.

Objections must be in writing, addressed to the DRP having jurisdiction, with a copy to the AO. They should identify the draft order, the assessment year, and each proposed variation under challenge. For every variation, state the facts accepted, the facts disputed, the legal ground, and the relief sought. Annex the draft order, the transfer-pricing order if any, and the key evidence already on the assessment record. Fresh evidence is not a matter of right before the DRP; if relied upon, explain why it could not be produced earlier and seek leave expressly.

Objection filing checklist

- ☐ Confirm the assessee is an **eligible assessee** and the document received is a draft under Section 144C.
- ☐ Count thirty days from the date of **receipt** of the draft; diary the last date immediately.
- ☐ Number grounds variation-wise; avoid rolled-up omnibus grounds.
- ☐ File objections with the DRP and serve a copy on the AO within the same window.
- ☐ Preserve proof of filing and service; track DRP notices for hearing or remand.

WARNING

Missed thirty days

If objections are not filed in time, the AO is free to complete the assessment on the draft. The assessee's remedy then shifts to a regular appeal against the final order-typically before the CIT(A)-not a belated DRP objection. Do not assume the DRP can condone delay as a matter of course.

DRP directions, final order and appeal to ITAT

DRP directions are **binding** on the Assessing Officer. The AO cannot dilute, ignore or re-argue points concluded by the Panel. The final assessment order must give effect to those directions on every variation the DRP has confirmed, reduced, enhanced or set aside. Enhancement by the DRP is permissible after opportunity to the assessee; practitioners should therefore treat the DRP hearing as a full contest, not a one-way shield.

Giving-effect order must work out appellate directions

LAWWORLD 2002 SC 1135

Where an appellate authority issues directions, the AO's giving-effect order must actually recompute the disputed heads in line with those directions; a demand or refund presupposes a completed giving-effect assessment. The same discipline applies when the AO implements binding DRP directions under Section 144C.

Once the final order is passed in conformity with the DRP, the assessee's appeal lies

directly to the ITAT under Section 253. There is no intermediate CIT(A) stop on issues that travelled through the DRP. The Revenue may also appeal the final order to the Tribunal where the DRP has granted relief. Form 36 and paper-book practice for that appeal are taken up in the ITAT chapter.

Later DRP view does not render prior Tribunal findings perverse

LAWWORLD 2018 KAR 0613

A different premise adopted by the DRP in a later year does not, by itself, make the Tribunal's factual findings for an earlier year perverse-especially while the later DRP order's own fate remains open. Year-specific DRP outcomes must be argued on their own record.

Strategic choice: DRP versus CIT(A)

The two routes are not freely interchangeable. Where Section 144C applies, the draft-order path is statutory; skipping objections and waiting for a final order simply to reach CIT(A) concedes the draft variations and postpones contest. Conversely, a domestic assessee with no TP variation cannot elect the DRP merely for speed or collegiate hearing.

Factor	DRP (s. 144C)	CIT(A) (s. 246A)
Entry trigger	Draft order to eligible assessee	Final appealable order
Filing clock	30 days from receipt of draft	Limitation from communication of final order
Forum character	Collegium; may confirm, reduce or enhance	Single authority; plenary powers under s. 251
Next appeal	Straight to ITAT against final order	ITAT against CIT(A) order
Typical use	TP variations; foreign company assessments	Ordinary quantum, penalty-linked and non-TP disputes

TIP

Protective discipline

If eligibility or the 'draft' character of the order is doubtful, diary **both** the thirty-day DRP clock and the CIT(A) limitation from any order that may be treated as final. File protectively in the forum the document supports, and record the parallel limitation expressly in the covering letter so wrong-forum time can later be explained.

In short: identify whether the client is an eligible assessee, treat the draft as a hard thirty-day event, draft variation-wise objections, and plan the ITAT appeal from the giving-effect order. The DRP is a bridge-not a detour-to the Tribunal.

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04

Drafting Form 35: Facts, Grounds and Prayer

Field-level practice for a durable first appeal

Form 35 fields: appellant, order and limitation

Form 35 is the statutory vehicle for an appeal to the Commissioner (Appeals). Every material entry must match the assessment record and the demand notice. Begin with appellant details exactly as on the permanent account and the order under challenge: name, address, PAN, status, and assessment year. Misalignment here invites defect notices and delays hearing.

Form 35

The prescribed form for filing a first appeal before the Commissioner (Appeals) against an appealable order, capturing appellant identity, the order challenged, limitation particulars, statement of facts, grounds of appeal, and relief sought.

Under the block for the order appealed against, state the Assessing Officer's designation, the section under which the order was passed, the date of the order, and the date of service or communication. Limitation particulars flow from that service date. Enter the due date for filing and the actual date of filing. If the appeal is within time, say so plainly. If delayed, the form requires a condonation request and reasons-state the delay in days and attach the affidavit; deep condonation doctrine is for the next chapter.

WARNING

No soft admissions in the header

Do not volunteer that tax was 'rightly assessed' on any head, or that only quantum is disputed, in the particulars block. Header fields are identification fields, not a second statement of facts.

Right of appeal is purely statutory

LAWWORLD 2010 SC 0420

The Court emphasises that a right of appeal is purely statutory and its nature, ambit and width must be gathered from the statutory language. Form 35 must therefore be completed strictly within the prescribed fields and conditions; practitioners cannot treat mandatory particulars as optional narrative.

Statement of facts: consistency through the ladder

The statement of facts is not a written submission. It is a short, chronological, neutral narrative: return filed, scrutiny or reassessment path, additions made, and the demand

raised. Keep figures tied to the assessment order. Avoid legal argument, adjectives, and commentary on the Assessing Officer's motives. Facts drafted here will be read against Form 36 and the paper book later; inconsistency is costly.

1. Open with assessee identity, business, and return particulars for the year.
2. Record the section under which assessment or reassessment was completed and the date of the order.
3. List each addition or disallowance with the amount as per the order-no recharacterisation yet.
4. State tax, interest and demand as raised; note any rectification already sought.
5. Close with service or communication date of the order and that the present appeal challenges the specified additions.

TIP

Draft once for the ladder

Write facts so they can be reused, with only forum-specific tweaks, before the ITAT. Do not assert a fact in Form 35 that you cannot support from the assessment record or admitted documents.

Grounds of appeal: numbering, clustering and restraint

Grounds must be numbered, concise, and clustered by addition or issue. Lead with jurisdictional or legal bars where they exist, then merits clusters (for example, cash credits, disallowances, estimation). Each ground should identify the addition, the error alleged, and the relief in outline-without embedding full case law or evidence dumps. Argumentative overload belongs in written submissions, not in the grounds schedule.

Clustered grounds

A drafting method that groups related challenges under a parent ground and short sub-grounds (for example, Ground 2 on a Section 68 addition with sub-grounds on identity, creditworthiness and genuineness), so the CIT(A) and later the ITAT can dispose issues cleanly.

Avoid admissions. Do not write that the assessee 'accepts' part of an addition unless that is a deliberate, instructed concession. Do not plead alternative inconsistent facts. A general ground seeking leave to add, amend or withdraw grounds may be retained in spare form; specific model language for particular additions is reserved for later chapters.

Annotated specimen structure

Use the following skeleton-not model merits language-for layout only:

- **Caption** - Assessee name, PAN, assessment year, CIT(A) charge, Form 35.
- **Particulars of order** - AO, section, date of order, date of service, demand.
- **Limitation** - Within time / delayed by __ days with condonation petition.
- **Statement of facts** - 8-15 short paragraphs, chronological, figure-true, non-argumentative.

- **Grounds** - G1 jurisdiction/limitation of AO action (if any); G2-Gn one cluster per addition; final ground on interest consequential relief; omnibus leave to amend.
- **Prayer** - Quash or set aside specified additions; grant consequential relief; pass other orders as fit.
- **Verification** - Signed by authorised person with place, date, and capacity.

Prayer, verification and filing checklist

The prayer must track the grounds. Seek deletion or reduction of each contested addition, consequential recalculation of tax and interest, and any specific procedural relief already flagged (for example, admission of an application filed with the appeal). Do not pray for stays inside Form 35 as a substitute for a proper stay application—that is a separate filing track.

Form 35 sign-off checklist

- ☐ Appellant name, PAN, status and addresses match the order and portal profile.
- ☐ Order section, date and service/communication date are correctly entered.
- ☐ Limitation math is checked; condonation affidavit attached if delayed.
- ☐ Statement of facts is neutral, figure-consistent, and free of legal argument.
- ☐ Grounds are numbered, clustered by issue, and free of unintended admissions.
- ☐ Prayer maps to each ground and seeks consequential relief.
- ☐ Verification signed with correct capacity; enclosures indexed (order, notice of demand, computation, power of attorney).
- ☐ Fee paid as applicable; portal acknowledgement and Form 35 PDF preserved.

NOTE

What this chapter does not cover

Condonation doctrine beyond the form's limitation fields, stay drafting, Rule 46A applications, and ITAT Form 36 are handled in dedicated later chapters. Addition-specific model grounds follow in the quantum chapters.

05

Limitation and Condonation before CIT(A) and ITAT

Counting time, sufficient cause and protective filing

Statutory clocks and when they start

An appeal to the Commissioner (Appeals) must ordinarily be presented within **thirty days** of the date of service of the notice of demand relating to the assessment or penalty order, or of service of the order sought to be appealed against, as the case may be. An appeal to the Income Tax Appellate Tribunal under Section 253 must ordinarily be filed within **sixty days** of the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or Commissioner. The clock runs from **communication or service**, not from the date typed on the face of the order, and not from informal knowledge of the result.

sufficient cause

A fact-specific explanation, supported by affidavit, showing why the appeal could not be filed within the prescribed period despite reasonable diligence; bald or single-line assertions do not qualify.

Exclude the day of service or communication when counting. If the order is uploaded on the portal and also served physically, take the **earlier effective communication** that puts the assessee on notice of the appealable order and demand. Diary both dates. Do not wait for a certified copy if the full order and demand are already available on the e-filing portal.

THE LIMITATION ACT, 1963 - Section s.12

In computing limitation for any appeal, the day from which the period is reckoned is excluded. For appeals, the day the judgment or order is pronounced and the time requisite for obtaining a copy of the decree or order appealed from are excluded; time taken by the court to prepare the decree or order before a copy application is made is not 'time requisite'.

Worked counting examples

1. **CIT(A):** Demand notice and assessment order served on 1 June. Day of service excluded. Thirty days run 2 June to 1 July. File on or before 1 July (or the next working day if that date is a holiday for the filing office/portal rules applicable).
2. **ITAT:** CIT(A) order communicated on 10 January. Sixty days run 11 January to 11 March. If 11 March is not available for e-filing, file on the immediate next permitted

day and record the reason.

3. **Late portal visibility:** Order dated 5 April but first reflected on the assessee's portal account on 20 April, with no earlier physical service. Count from 20 April; preserve screenshots and acknowledgment logs as proof of first communication.

Condonation: sufficient cause, length and diligence

Both forums may admit a delayed appeal if the appellant shows **sufficient cause** for not presenting it in time. File a **separate condonation application** with a supporting affidavit whenever the appeal is out of time; do not bury the explanation inside the grounds. The authority must first address delay before touching merits.

PTCL limitation and condonation application

High Court of Karnataka, 2023

A belated appeal must be accompanied by a separate condonation application supported by affidavit; deciding merits while ignoring delay is erroneous. Same filing discipline applies before CIT(A) and ITAT.

LawWorld ID: LAWWORLD 2023 KAR 0611

Length of delay is relevant but not decisive. Short delays with a coherent explanation are routinely condoned on a justice-oriented view. Inordinate delay demands a **day-by-day or period-wise** account. A single-paragraph bald plea that the order was not 'intimated' or that copies were obtained late will not do.

Bald plea is not sufficient cause

Supreme Court, 2012

Where condonation rested on a bare statement that the result was not intimated and revisions were filed only after certified copies, no reasonable satisfaction of sufficient cause under Section 5 could be reached. Draft affidavits with dated facts, not conclusions.

LawWorld ID: LAWWORLD 2012 SC 126

Condonation before CIT(A) after Section 263 notice

High Court of Karnataka, 2015

Delay of 331 days in appealing an assessment accepted in full was condoned where the assessee bona fide believed an appeal was pointless in the absence of demand and moved only after a Section 263 notice made the order adverse. Honest belief plus prompt action after the trigger can be sufficient cause.

LawWorld ID: LAWWORLD 2015 KAR 0821

Forty-five days' delay condoned on sufficient cause

High Court of Karnataka, 2024

A 45-day delay attributed to bona fide and unavoidable circumstances was condoned on a justice-oriented approach, distinguishing cases of multi-year lethargy. Modest delay plus diligence favours admission.

LawWorld ID: LAWWORLD 2024 KAR 0756

WARNING

Diligence cuts both ways

If the assessee received the order, instructed counsel, and then went silent for months, condonation is weak whatever the merits. If internal disputes, illness of the key signatory, or late receipt through a closed business address are pleaded, annex proof and explain each segment of the timeline.

When the CIT(A) rejects an appeal solely on limitation and that rejection is carried to the ITAT, the appeal fee is the residuary fee for subject-matters other than assessed-income slabs-not the high slab tied to assessed income-because the subject-matter is the refusal to condone delay.

ITAT fee on appeal against refusal to condone

High Court of Karnataka, 2006

Where CIT(A) rejected appeals only on limitation, the Tribunal appeal fell under Section 253(6)(d) and attracted the lower residuary fee, not the fee keyed to assessed income.

LawWorld ID: LAWWORLD 2006 KAR 0930

Protective filing, writ disposal and wrong forum

*File a **protective appeal** within limitation whenever a parallel writ is pending against the same order, or whenever jurisdiction is debatable. Disposal of the writ does not automatically revive a lapsed appellate limitation. On writ disposal, check immediately whether any appeal period remains; if not, file with a condonation application explaining the bona fide pursuit of constitutional remedies and annex the writ timeline.*

protective appeal

An appeal filed within time to preserve the statutory remedy while another proceeding (writ, revision, or parallel forum) is pending, so that dismissal or withdrawal of the other proceeding does not leave the assessee remediless on limitation.

*Where the assessee prosecuted an appeal or allied proceeding in the **wrong forum** with due diligence and in good faith, the principles underlying Section 14 of the Limitation Act support exclusion of that time even before quasi-judicial tax authorities, though the Limitation Act may not apply in terms.*

THE LIMITATION ACT, 1963 - Section s.14

In computing limitation for a suit or application, time spent prosecuting with due diligence another civil proceeding on the same matter in issue is excluded where that proceeding was pursued in good faith in a court unable to entertain it from defect of jurisdiction or other cause of a like nature.

Section 14 principles before quasi-judicial appellate authorities

Supreme Court, 2015

Though the Limitation Act including Section 14 does not in terms apply to appeals before authorities such as Commissioner (Appeals), the justice-advancing principles of Section 14 do apply. Bona fide, diligent pursuit of an abortive appeal in a forum without jurisdiction can be excluded so that the correct appeal is treated as in time.

TIP

Wrong-forum record

Preserve the stamped filing proof, defect memos, and dismissal order of the abortive proceeding. In the condonation or exclusion application, plead identity of subject-matter, good faith, due diligence, and the precise jurisdictional defect.

Limitation and condonation filing checklist

- ☐ Record date of portal upload, physical service, and notice of demand-use the earliest effective communication.
- ☐ Count excluding the start day; diary the last date and file at least two working days earlier.
- ☐ If delayed, file a separate condonation petition with a dated affidavit and supporting annexures.
- ☐ Explain each segment of delay; avoid bald 'not intimated' pleas.
- ☐ For wrong-forum or writ overlap, plead Section 14 principles and annex the full prior docket.
- ☐ File protectively within time whenever a writ or jurisdictional contest is live.
- ☐ On appeal against pure limitation rejection at CIT(A), apply the residuary ITAT fee position where applicable.

06

Stay of Demand: Forum, Tests and CBDT Framework

Section 220(6), appellate stay and circular-guided discretion

Where to seek stay: AO, CIT(A) and ITAT

On receipt of the demand notice, the first and most immediate forum is the Assessing Officer. While a first appeal is pending, Section 220(6) empowers the AO to treat the assessee as not in default in respect of the amount in dispute, subject to conditions the AO may impose. File the stay application with the AO **simultaneously with Form 35**. Do not wait for the first hearing. **Karnataka High Court authority** confirms that the assessee may approach the Assessing Authority under Section 220(6) so that recovery is held pending disposal of the appeal, subject to lawful conditions.

Section 220(6) stay

Discretionary power of the Assessing Officer, while a first appeal is pending, to treat the assessee as not being in default in respect of the disputed demand, usually on conditions such as part payment, instalments or security.

The CIT(A) may also be moved for interim protection once the appeal is on the file, especially if the AO refuses stay or imposes harsh conditions. At the second appellate stage, there is no express departmental power equivalent to Section 220(6) for Tribunal appeals. The Supreme Court has held that the Income-tax Appellate Tribunal nonetheless possesses **incidental power** to stay recovery so that the appeal is not rendered nugatory. That incidental power flows from the width of Section 254 and is the proper route when the matter is before the ITAT.

ITO v. M.K. Mohammed Kunhi line (affirming incidental Tribunal stay)

Supreme Court, 1968

Section 220(6) covers AO treatment as not in default while first appeal is pending; there is no parallel statutory power for departmental officers when appeal is before the Tribunal. The Tribunal's incidental power to stay recovery pending its appeal is affirmed.

LawWorld ID: LAWWORLD 1968 SC 0919

Stay of tax recovery - proper forum

Supreme Court, 1985

Power to stay recovery pending adjudication lies with the appellate authority, including the Tribunal; Section 254 carries by necessary implication the incidental power to pass stay orders. Improper exercise is correctable under Articles 226 and 227, not by treating High Court as the ordinary first stay forum.

Implied ancillary powers of tribunals

Supreme Court, 1996

An express grant of appellate power carries authority to use all reasonable means to make the grant effective, including stay to prevent the appeal from being rendered nugatory.

Reinforces ITAT stay as incidental to Section 254.

LawWorld ID: LAWWORLD 1996 SC 08143

TIP

Filing sequence on assessment day

File Form 35 (or Form 36) and the stay application the same day. Serve the AO with the appeal acknowledgment and stay papers. If coercive recovery is imminent and the AO has not disposed the stay plea, move CIT(A) or ITAT (as the case may be) and keep a complete paper trail for any later writ on process, not merits.

Judicial tests and the CBDT framework

Stay is discretionary and must be exercised **judicially**, not routinely. The classic triad is: (1) **prima facie case** on the disputed additions; (2) **balance of convenience**; and (3) **irreparable hardship** if recovery proceeds. A bare assertion of prima facie case is not enough. Conversely, if on a cursory glance the demand has no leg to stand on, insisting on full or substantial payment is undesirable. Denial that risks grave irreparable private injury can justify higher-court interference with a mechanical refusal.

Principles for grant of stay in fiscal matters

Supreme Court, 2006

Discretion must be exercised judicially; stay petitions cannot be disposed of without analysing facts. Mere prima facie case is insufficient; yet where demand clearly lacks foundation, full or substantive pre-deposit is undesirable. Irreparable private injury and public-administration confidence are relevant to interim relief.

LawWorld ID: LAWWORLD 2006 SC 11117

Prima facie case (stay context)

A seriously arguable case on the face of the assessment and appeal papers-not a mini-trial on merits, but enough to show the demand is open to substantial challenge and is not a mere delaying tactic.

Irreparable hardship

Harm that cannot be adequately undone by refund with interest if the appeal later succeeds-liquidity freeze, business disruption, or recovery that would cripple operations relative to the strength of the challenge.

Administrative guidance is anchored in **CBDT Instruction No. 1914**. The Circular dated **29-2-2016** was issued only in **partial modification** of Instruction 1914; it does **not** supersede 1914 in toto. The 2016 circular standardises the lump-sum ordinarily required for stay- **15% of the disputed demand** -and provides a path to demand more or less

than 15% through the variation mechanism. Instruction 2-B(iii) of 1914, requiring examination of whether the assessment is **unreasonably high-pitched** or whether recovery would cause **genuine hardship**, **continues to operate**. Both the AO and the Principal CIT must still apply those factors when deciding stay.

Interplay of Instruction 1914 and Circular dated 29-2-2016

Karnataka High Court, 2017

The 29-2-2016 circular only partially modifies Instruction 1914. High-pitched assessment and genuine hardship under Instruction 2-B(iii) remain mandatory considerations. The 15% norm is the standardised lump-sum, variable upward or downward under the circular's variation clauses.

LawWorld ID: LAWWORLD 2017 KAR 021

Stay, Instruction 1914 and related discretion

Karnataka High Court, 2015

Illustrates strict reading of Instruction 1914 stay illustrations and that exemption-type discretions must rest on good and sufficient recorded reason; stay under the instruction's favourable-issue illustration requires a prior decision in the assessee's favour on the disputed issue.

LawWorld ID: LAWWORLD 2015 KAR 1231

Factor	What to plead	Typical outcome lever
Prima facie case	Clustered grounds, key orders in assessee's favour, jurisdictional defects	Supports stay; may justify below-15% if demand is weak
High-pitched assessment	Compare returned income, history, and quantum of additions without arguing full merits	Variation below standard lump-sum; stronger 220(6) case
Genuine hardship	Cash flow, bank limits, stock statements, pending receivables, affidavit of means	Instalments, reduced percentage, or security instead of cash
Balance of convenience	Refund delay vs. immediate recovery damage; offer of part payment/security	Conditional stay rather than outright refusal
Compliance history	Past payments, non-habitual default, cooperation in assessment	Supports AO discretion to treat as not in default

WARNING

Do not treat 15% as automatic full and final

The 15% figure is the **ordinary** lump-sum under the 2016 modification, not a substitute for hardship and high-pitch analysis. Equally, offering nothing without a documented hardship or high-pitch case invites conditional orders at 50% or higher. Courts have upheld substantial part-payment conditions where the stay application was decided on merits.

Conditional stay on part payment upheld

Karnataka High Court, 2011

Stay subject to payment of 50% of outstanding demand in instalments was upheld; writ court found no error where the stay application was disposed of on merits.

LawWorld ID: LAWWORLD 2011 KAR 0156

Tribunal stay, outer periods and application template

Once the appeal is before the ITAT, seek stay from the **Tribunal**, not from the AO under Section 220(6). Frame the application on the same triad of tests, annex the Form 36 acknowledgment, the demand notice, the CIT(A) order if any, and proof of any amount already paid under the 1914/2016 framework. Conditional stay-part payment or instalments-is common and, if reasoned, is slow to be disturbed in writ.

Tribunal stay is not perpetual. Practice and statutory outer limits require the assessee to **seek extension before expiry** and to press for early hearing. If the appeal is not disposed of within the prescribed outer period attached to the stay regime, the stay can **lapse automatically** unless extended by a reasoned order. Diary the expiry date the day stay is granted. File the extension application with a short status note: paper book filed, dates of hearing, cause of non-disposal not attributable to the assessee, and continued hardship.

Stay path from assessment to ITAT

1. Receive assessment order and demand notice; compute disputed demand versus admitted tax.
2. File appeal (Form 35 or 36) and stay application the same day; serve AO with appeal proof.
3. AO under Section 220(6): plead 1914 hardship/high-pitch plus 2016 percentage with variation facts.
4. If refused or harsh: move CIT(A) for interim protection with AO order annexed.
5. On ITAT appeal: apply for incidental stay under Tribunal's Section 254-linked power.
6. Diary stay expiry; file extension before lapse; seek early hearing if recovery pressure continues.
7. If process is ignored (no hearing on stay), preserve record for narrow writ on procedure, not merits.

Practical stay-application template outline

Skeleton contents (attach to AO / CIT(A) / ITAT as forum requires)

- ☐ **Cause title** - assessee, PAN, assessment year, impugned order date, appeal acknowledgment number.
- ☐ **Jurisdiction paragraph** - Section 220(6) before AO; appellate interim prayer before CIT(A); incidental stay before ITAT.
- ☐ **Demand break-up table** - returned income, assessed income, tax/interest demand, admitted vs disputed amounts, amounts already paid.

- **Prima facie case** - short numbered points mapped to appeal grounds; annex key favourable materials (no full merits essay).
- **High-pitched assessment** - ratio of additions to returned income; prior-year consistency; any covered issues.
- **Genuine hardship** - liquidity affidavit, bank statements, credit limits, receivables, payroll/statutory dues impact.
- **Balance of convenience and offer** - percentage offered (with 2016 baseline), instalments, or bank guarantee.
- **Prayer** - treat as not in default / stay recovery pending appeal; interim protection against coercive steps; early hearing if needed.
- **Annexures index** - assessment order, demand notice, appeal form, financials, earlier stay orders, proof of part payment.

Keep the stay record consistent with the Form 35/36 facts. Do not invent a different quantum story for hardship. If the AO rejects without hearing, or recovery is pressed while a stay application is pending, the remedy is a focused process challenge. *Writ practice* shows courts will quash non-speaking rejection of related Section 220 applications and restrain coercive steps long enough for a fair rehearing-without deciding the tax merits.

NOTE

Simultaneous filing habit

The stay application is part of appeal day, not a later firefight. Build hardship evidence while drafting grounds. Pay admitted tax without delay. Offer a reasoned percentage against disputed demand so the AO and Tribunal can grant **conditional** stay rather than refuse outright.

Remand on Section 220 application and interim protection

Karnataka High Court, 2019

Non-speaking rejection of a Section 220(3) application was quashed and remitted for fresh hearing; coercive enforcement was stayed until records were furnished and a short further period ran-illustrating process-based interim protection.

LawWorld ID: LAWWORLD 2019 KAR 0332



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07

Rule 46A: Additional Evidence before the First Appellate Authority

When new material can-and cannot-enter the record

The Rule 46A gateways

Additional evidence

Documentary or oral material that was not on the assessment record and that the appellant seeks to place before the CIT(A) for the first time, admissible only through the gateways in Rule 46A of the Income-tax Rules, 1962.

Rule 46A(1) permits the appellant to produce additional evidence before the CIT(A) only in four situations: **(a)** the Assessing Officer refused to admit evidence which ought to have been admitted; **(b)** the appellant was prevented by sufficient cause from producing evidence which the Assessing Officer had called for; **(c)** the appellant was prevented by sufficient cause from producing evidence which is relevant to any ground of appeal; or **(d)** the Assessing Officer made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal. Separately, Rule 46A(4) preserves the CIT(A)'s power to direct production of any document or examination of any witness to enable disposal of the appeal, or for any other substantial cause-including where enhancement is in contemplation.

Admission is not automatic. Under Rule 46A(2), the CIT(A) must record **reasons in writing** for admitting the evidence. Diligence at the assessment stage remains central: material that existed and could have been filed earlier will ordinarily fail the sufficient-cause tests unless a concrete explanation is offered. Where the assessee could not produce documents or examine witnesses at the original venue, the appellate authority may balance the grievance by calling a report under Section 250(4) and permitting tender of further material through that route, as illustrated in [the Karnataka High Court's Section 250\(4\) directions](#).

Appeal against assessment-additional evidence through Section 250(4) report

High Court of Karnataka, 2015

To balance inability to produce documents and examine witnesses with completed assessment, the Court directed the appellate authority to call a Section 250(4) report and permit the assessee to tender additional documents and witnesses on that report before deciding the appeals.

LawWorld ID: LAWWORLD 2015 KAR 0837

Mandatory opportunity to the Assessing Officer

Rule 46A(3) is non-negotiable. Before taking additional evidence on record, the CIT(A) **shall** allow the Assessing Officer a reasonable opportunity: to examine the evidence or document, to cross-examine the witness produced by the appellant, and to produce any evidence or document-or examine any witness-in rebuttal. Skipping this step vitiates the admission. Practically, file the application early, serve the AO, and invite a remand report so the rebuttal opportunity is real rather than formal.

WARNING

Do not treat AO silence as waiver

Even if the AO does not immediately object, the CIT(A) must still extend the Rule 46A(3) opportunity. An order that relies on new documents without that opportunity is exposed on further appeal.

Duty of appellate authority regarding additional evidence

High Court of Karnataka, 2022

On a parallel VAT provision requiring disposal on merits if necessary by taking additional evidence, the Court held the authority must pass a reasoned order allowing or rejecting production and, if allowing, discuss the implications of that evidence-supporting the discipline of reasoned admission under Rule 46A.

LawWorld ID: LAWWORLD 2022 KAR 0234

Structuring the application; evidence versus grounds

Additional evidence is new material for the record. **Additional grounds** are new legal or factual pleas that may rest entirely on the existing record. The two must not be conflated. Additional grounds may be entertained where the plea could not have been raised earlier or becomes available from change in circumstances or law, if the failure was bona fide and for good reason-the discretion is to be exercised in accordance with law and reason, as explained in [the Supreme Court's ruling on additional grounds before the first appellate authority](#). A pure ground of law on the existing papers does not need a Rule 46A application; new documents always do.

Appellate Assistant Commissioner - additional grounds - conditions for entertainment

Supreme Court, 1990

Earlier restrictive observations do not bar an additional ground before the first appellate authority where it could not have been raised at return or assessment, or becomes available from change in circumstances or law; admission turns on bona fides and good reasons for earlier omission.

LawWorld ID: LAWWORLD 1990 SC 093

Rule 46A application-recommended structure

1. Caption the appeal and state that the application is under Rule 46A(1), identifying clause (a), (b), (c) or (d)-or invite exercise under Rule 46A(4).

2. Narrate assessment chronology: what the AO called for, what was filed, and where opportunity fell short.
3. Annex a numbered **schedule of documents** (description, date, pages) and, if oral evidence is sought, name the witness and the fact to be proved.
4. Against each item, state **why it was not produced earlier** -refusal, sufficient cause, or denial of opportunity-tied to the chosen gateway.
5. Show relevance to a specific ground of appeal already taken (or to a simultaneous additional-ground plea).
6. Pray for admission with written reasons under Rule 46A(2), AO opportunity under Rule 46A(3), and reliance after rebuttal.

Filing checklist

- ☐ Map each document to Rule 46A(1)(a)-(d) or to a Rule 46A(4) request
- ☐ Schedule of documents with dates and page marks
- ☐ Item-wise reasons for non-production at assessment
- ☐ Link each item to a numbered ground of appeal
- ☐ Separate application for additional grounds if new pleas are also raised
- ☐ Request AO examination, cross-examination and rebuttal under Rule 46A(3)
- ☐ Reserve liberty to seek a Section 250(4) remand report where local enquiry is needed

The Income Tax Appellate Tribunal is not bound by Rule 46A in the same way; it has wider power to admit evidence in the interest of justice. That latitude is not a reason to withhold material at the CIT(A) stage. Build the record here-admission under Rule 46A, AO rebuttal, and reasoned order-so the Tribunal reviews a complete file rather than a fresh evidentiary battle. Paper-book assembly and Tribunal filing mechanics are taken up in the ITAT practice chapter.

TIP

Practice point

Where the real defect was denial of opportunity before the AO, prefer a focused Rule 46A(1)(d) plea plus a Section 250(4) report request over an open-ended remand prayer. Keep the additional-evidence application distinct from Form 35 grounds so admission can be ordered without reopening the entire pleading.



08

Section 68 Cash Credits: Appellate Attack and Defence

Identity, creditworthiness and genuineness on appeal

The three-part test and how additions are framed

cash credit

Any sum found credited in the books of the assessee for which the assessee must explain the nature and source to the Assessing Officer's satisfaction; if the explanation is not satisfactory, the sum may be treated as income.

Cash-credit additions rest on a single structure. The initial onus is on the assessee to establish, by cogent evidence, three linked elements: **identity** of the creditor or investor, **creditworthiness** (capacity to advance), and **genuineness** of the transaction. The expression covering sums credited in the books is wide enough to take in share capital and share premium. Mere banking-channel proof, return filings, or bare identity does not discharge the onus if capacity and genuineness remain unproved.

Section 68 - onus on share capital and premium

Supreme Court, 2019

Share capital and premium are within the cash-credit frame. Assessee must prove identity, creditworthiness and genuineness; unsatisfactory explanation permits treating the credit as income.

LawWorld ID: LAWWORLD 2019 SC 0338

Bundle of facts under cash-credit enquiry

High Court of Karnataka, 2006

Satisfaction turns on a bundle of facts-identity, genuineness and capacity-not identity alone. Without acceptable proof of nature and source, the officer may treat the credit as income from undisclosed sources.

LawWorld ID: LAWWORLD 2006 KAR 1121

On appeal, first isolate what the assessment order actually found wanting. Many orders collapse all three limbs into a single adverse sentence, or reject capacity solely because the creditor is an agriculturist or a small-return filer. That framing is the attack surface: force the first appellate authority to test each limb against the paper on record.

Documentary bundles, cross-examination and AO shortcuts

Build the appeal record as a creditor-wise bundle, not a loose annexure dump. For each

credit, align confirmation, bank trail, source of funds in the creditor's hands, and any assessment footprint of the creditor. Capacity can be shown through agricultural or business income and matured deposits explained on affidavit, as accepted where the source of the loan was clearly spelt out.

Relative's credit and capacity on affidavit

High Court of Karnataka, 2006

Mere identity is not enough, but where the creditor's affidavit disclosed agricultural and business income and matured fixed deposits in the relevant period, the credit could not be treated as unexplained.

LawWorld ID: LAWWORLD 2006 KAR 0914

Weak creditor story and concurrent findings

High Court of Karnataka, 2015

Where the named creditor's statement showed no immovable property, no proof of alleged lands or jewel sales, and a large dependent family, a prudent person could not accept a large advance; addition upheld-use as a cautionary template of what fails.

LawWorld ID: LAWWORLD 2015 KAR 0449

- **Shortcut - identity only rejected:** AO ignores bank credits, confirmations and returns; ground the appeal on incomplete enquiry.
- **Shortcut - same-handwriting discard:** Written confirmations rejected without examining the signatories.
- **Shortcut - non-appearance equals failure:** Summons returned 'left' and Revenue stops; no adverse inference is automatic if the assessee has already given names, addresses, confirmations and discharged instruments.
- **Shortcut - third-party disclosure shield:** Credits taxed in another's voluntary disclosure do not bar investigation of the true nature and source in the assessee's books.

Defective enquiry and duty to examine confirmers

High Court of Karnataka, 2018

Confirmations from agriculturists explaining cash refunds could not be rejected merely for same handwriting without recording their evidence; powers akin to a civil court should be used to summon and examine before discard.

LawWorld ID: LAWWORLD 2018 KAR 0717

Burden discharged; Revenue must pursue creditors

Supreme Court, 1986

Discharged hundis, confirmations, and known assesseees with departmental index numbers, plus summons returned 'left', sufficed; Revenue's failure to pursue creditworthiness meant the assessee had discharged the burden-no automatic adverse inference.

LawWorld ID: LAWWORLD 1986 SC 0328

Voluntary disclosure does not block cash-credit probe

Supreme Court, 1981

Investigation of true nature and source of credits in the assessee's books remains open even if declarants offered the sums under a voluntary disclosure scheme.

LawWorld ID: LAWWORLD 1981 SC 0510

TIP

Cross-examination request

*Where the addition rests on a third-party statement, inspector report, or ex parte 133(6) material, place a **written request** for cross-examination and for summons to the creditor before the first appellate authority. Tie the request to specific adverse sentences in the assessment order so denial itself becomes an appellate ground.*

Cash-credit appeal file - minimum set

- ☐ Credit-wise ledger extract and narration matching the assessment schedule
- ☐ Confirmations with PAN, address and relationship (if any)
- ☐ Bank statements on both sides showing clearance path
- ☐ Creditor capacity proof: returns, balance sheets, sale deeds, deposit maturity, agricultural evidence
- ☐ All notices, replies, and statements recorded; mark what was never put to the assessee
- ☐ Written cross-examination / summons request with proof of filing
- ☐ Share-capital set: applications, allotment board minutes, ROC filings, premium working, investor bank trail

Model grounds - cash credits and share application money

Cluster grounds by limb. Keep facts in the statement of facts; keep each ground short, non-argumentative, and reusable across CIT(A) and ITAT with only forum tweaks. For share capital and premium, plead the same three limbs investor-wise and attack any omnibus 'accommodation entry' finding that skips investor-level enquiry.

Ordinary cash credits - sample ground language

1. *The addition of Rs.____ as unexplained cash credit is bad in law and on facts; the appellant discharged the primary onus by proving identity, creditworthiness and genuineness of each creditor.*
2. *Without prejudice, the Assessing Officer erred in rejecting the explanation without a complete enquiry and without confronting the appellant with the material relied upon.*
3. *The Assessing Officer erred in discarding confirmations and bank evidence without summoning or examining the creditors, and in drawing an adverse inference from non-appearance alone.*
4. *The finding on capacity is perverse; the record shows the source of funds in the creditors' hands through returns, deposits and other contemporaneous material.*

5. The addition deserves to be deleted in full.

Share application / share capital / premium - sample ground language

1. The addition of share application money / share capital / premium of Rs.____ as unexplained credit is unsustainable; the credits are within the books and the appellant proved identity of investors, their creditworthiness and genuineness of the subscription.
2. Banking-channel receipt and investor particulars were on record; the Assessing Officer erred in treating the same as insufficient without bringing positive material to disprove capacity or genuineness investor-wise.
3. Omnibus reliance on investigation wing material without investor-specific opportunity or cross-examination vitiates the addition.
4. Investor-wise confirmations, allotment records and source-of-funds evidence were ignored; the satisfaction recorded is mechanical.
5. The entire addition toward share capital and premium may be deleted.

WARNING

Do not over-plead

Avoid admitting that any limb was unproved 'for abundant caution'. Do not collapse share-capital grounds into a generic 'books are audited' line-audit does not replace the three-part proof. Keep penalty-facing language out of quantum grounds; consistency with later penalty appeals still matters.

On defence of an addition (Departmental appeal or enhancement risk), stress gaps the assessee never filled: shifting creditor names, absence of source in the creditor's hands, and stories no prudent person would accept. Concurrent factual findings on capacity are hard to reopen absent perversity. Where later penalty proceedings accept the same third-party version that quantum rejected, flag that inconsistency for the quantum forum still seized-subsequent acceptance of identity and credit sales has been treated as dispelling the factual basis of a related addition.

Later acceptance of dealers' version and cash-credit base

Supreme Court, 2020

Affidavits and examination of unregistered dealers in penalty proceedings, accepting identity and credit sales with undisputed stock trail, were treated as removing the factual foundation of the related addition-use carefully when quantum and penalty records diverge.

LawWorld ID: LAWWORLD 2020 SC 044

Appellate sequence on a Section 68 file

1. Extract every credit and match to assessment schedule and books
2. Score each credit on identity, capacity and genuineness; list missing proof
3. File cross-examination / summons requests tied to adverse findings
4. Draft clustered grounds-ordinary credits separate from share capital

5. *At hearing, force limb-wise findings; press defective enquiry and non-confrontation*
6. *Preserve investor-wise paper book for ITAT without changing the factual story*



09

Section 14A and Section 40(a) Disallowances on Appeal

Rule 8D contests and TDS-linked expenditure disallowance

Section 14A and Rule 8D on appeal

Section 14A disallowance

Disallowance of expenditure incurred in relation to income that does not form part of total income, so the assessee does not enjoy both exempt income and a deduction for related outgoings. Only expenditure with a causal nexus to exempt income may be disallowed.

On first appeal, dismantle a Section 14A addition in three steps: (1) was any expenditure actually incurred in earning exempt income; (2) did the Assessing Officer record satisfaction, having regard to the accounts, that the assessee's suo motu figure is incorrect; and (3) was Rule 8D applied only after that satisfaction and within its prospective field. Absent nexus, disallowance fails. 2021 SC authority restates that only expenditure with a causal connection to exempt income can be hit; bare ownership of investments is not enough.

Satisfaction before Rule 8D

LAWWORLD 2018 SC 0280

Before applying apportionment under Section 14A read with Rule 8D, the AO must record satisfaction that, having regard to the kind of assessee and the accounts, the assessee's own disallowance is not correct-including examination of the nature of loans used to fund investments. Mechanical Rule 8D without this step is vulnerable on appeal.

Satisfaction and year-to-year consistency

LAWWORLD 2017 SC 054

Section 14A(1) requires proof that expenditure was actually incurred in earning exempt income; under Section 14A(2)-(3) read with Rule 8D the AO must first record account-based satisfaction. Where earlier years deleted interest disallowance for want of nexus and those orders attained finality, a later year with no reasoned satisfaction cannot stand.

Rule 8D prospective from AY 2008-09

LAWWORLD 2018 SC 0224

Rule 8D cannot be applied retrospectively to years before AY 2008-09. For pre-Rule years, challenge any formulaic computation as legally incompetent.

Quantum discipline matters. Disallowance must rest on accounts and a rational method, not wild guesswork, and cannot exceed total expenditure claimed. Ad-hoc percentages of dividend without tangible basis, or Rule 8D where there is no opening or closing balance of exempt-yielding investments, are routinely deleted. Consistency with deletions accepted in the assessee's own earlier years is a powerful appellate fact. Capital-versus-revenue characterisation of the underlying outlay is a separate contest-do not collapse it into the 14A ground cluster.

Nexus, rational method, and ceiling

LAWWORLD 2018 KAR 058

Only expenditure directly relatable to exempt income may be disallowed; the AO must determine it from accounts on a rational basis and cannot abdicate that duty. Disallowance cannot exceed total expenditure under the Rule 8D proviso.

Ad-hoc 14A disallowance unsustainable

LAWWORLD 2025 KAR 0937

Ad-hoc disallowance of a percentage of dividend without tangible basis was deleted where there was no opening/closing mutual-fund balance yielding exempt income (Rule 8D inapplicable) and similar deletions in earlier years had been accepted.

Model grounds - Section 14A cluster

1. The AO erred in invoking Section 14A without establishing that any expenditure was actually incurred in relation to exempt income or had a causal nexus therewith.
2. The AO failed to record satisfaction under Section 14A(2), having regard to the accounts, that the appellant's suo motu disallowance was incorrect, and mechanically applied Rule 8D.
3. Rule 8D was applied to a year / investment base to which it does not operate (including pre-AY 2008-09, or where no exempt-yielding investment balance existed).
4. The disallowance is ad-hoc / exceeds expenditure claimed / ignores deletions on identical facts in the appellant's own earlier years that have attained finality.

Section 40(a)(ia) and TDS-linked disallowances

Section 40(a)(ia) disallowance

Disallowance of specified expenditure on which tax was deductible at source under Chapter XVII-B but was not deducted, or after deduction was not paid within the prescribed window. It enforces TDS compliance by deferring the deduction rather than imposing a permanent penalty.

Section 40(a)(ia) is a compliance lever, not a punishment. It covers sums already paid as well as sums outstanding-the word 'payable' is not confined to unpaid balances. Hardship or prejudice pleas do not dilute the provision where neither deduction nor deposit occurred. Successive provisos (including the 2008 amendment, held retrospective) protect bona fide assessee who deducted TDS but deposited it within the extended windows tied to the Section 139(1) due date, especially for March deductions.

'Payable' includes amounts already paid

LAWWORLD 2017 SC 0510

Section 40(a)(ia) covers not only amounts outstanding but also amounts already paid without TDS. Default is tied to Chapter XVII-B obligations; confining the provision to unpaid sums would let payers who paid without deducting escape the enacted consequence.

Object and 2008 curative amendment

LAWWORLD 2018 SC 0485

The provision augments TDS compliance and shifts the year of claim depending on deposit timing; it is not meant to punish. The Finance Act, 2008 amendment, retrospective from 01.04.2005, eases March TDS if paid by the Section 139(1) due date and calibrates earlier-month deductions accordingly.

Compliance purpose; hardship plea rejected

LAWWORLD 2020 SC 0718

Disallowances in Part D of Chapter IV, including Section 40(a)(ia), enforce compliance and transparency. Prejudice/hardship arguments fail where the statutory default is made out; provisos safeguard only those who deducted but deposited belatedly within the cured windows.

Fact contests that win on appeal include: no TDS obligation on a correct reading of the charging section (threshold, nature of payment, payee status); deduction and deposit within the curative window so disallowance must be vacated or the claim allowed in the year of deposit; and proof that the payee has offered the sum to tax and paid tax thereon, where the governing second-proviso pathway is pleaded with payee PANs, returns and confirmations. Do not treat a 40(a) fight as a capital-versus-revenue characterisation dispute-that boundary belongs elsewhere.

Section 194C aggregate threshold

LAWWORLD 2015 KAR 0759

Where aggregate payments to a truck owner in the year exceeded the statutory threshold, Section 194C applied even if no single payment crossed it; failure to deduct attracted Section 40(a)(ia). On appeal, test the correct TDS section and aggregate facts before conceding default.

Model grounds - Section 40(a)(ia) cluster

1. No tax was deductible under the applicable Chapter XVII-B provision on a correct characterisation of the payment, payee and monetary threshold; Section 40(a)(ia) is not attracted.
2. Tax was deducted and deposited within the time contemplated by Section 40(a)(ia) as amended, including the retrospective 2008 curative window; disallowance is bad in law.
3. Without prejudice, the payee has already offered the corresponding income to tax and paid tax thereon; disallowance deserves deletion on the second-proviso / payee-taxation pathway, with PAN, return and confirmation evidence.

4. Disallowance, if any, can only defer the claim to the year of deposit and cannot permanently deny expenditure otherwise allowable.

Appeal file - 14A and 40(a) pack

- ☐ Suo motu 14A working, investment schedule, exempt income ledger, and loan-nexus note
- ☐ AO satisfaction paragraph extracted; flag absence or boilerplate
- ☐ Rule 8D year-check (AY 2008-09 onward) and investment opening/closing balances
- ☐ TDS ledgers, challans, Form 26Q/27Q, and March-deposit timeline to Section 139(1) due date
- ☐ Payee PAN, acknowledgement, and confirmation that the sum is taxed in payee hands
- ☐ Cluster grounds separately: nexus/satisfaction/Rule 8D versus TDS chargeability/curative deposit/payee tax

TIP

Drafting discipline

Keep 14A grounds and 40(a) grounds in separate numbered clusters. Do not plead penalty exposure here-align quantum relief with the penalty appeal in the dedicated penalty chapter. Preserve identical fact statements when the same disallowance travels to ITAT.

10

Bogus Purchases and Capital versus Revenue Contests

Supplier credibility, GP estimation and characterisation appeals

Bogus and hawala purchase additions: full disallowance versus GP estimation

Purchase disallowances typically rest on supplier non-response, sales-tax or investigation-wing information, or alleged hawala invoices. The Assessing Officer may disallow the entire purchase or estimate suppressed profit. On appeal, the first task is to separate identity and existence of the supplier from the quantitative reality of goods received, consumed and sold. Where books, stock and sales are otherwise accepted, full disallowance often overstates income; tribunals frequently substitute a gross-profit (GP) addition keyed to comparable margins.

hawala purchase

A purchase claimed in the books for which the supplier is alleged to be non-genuine or a mere accommodation entry provider, so that the invoice is treated as a paper trail without real movement of goods.

GP estimation

An appellate or assessment technique that, instead of disallowing the full purchase value, adds only the estimated profit element embedded in disputed purchases, usually by applying a gross-profit rate to turnover or to the disputed purchase quantum.

Whether purchases are bogus is ordinarily a finding of fact. Concurrent findings of the Assessing Officer, CIT(A) and Tribunal on bogus purchases and rejection of books attract limited interference if reasons are cogent and the estimate is not arbitrary. **2006 SC bogus-purchases ruling** Conversely, once books are rejected and profit is estimated, the same rejected books cannot support further discrete additions on creditors or stock; the GP rate is treated as covering infirmities in those books. **Karnataka High Court on rejected books and GP**

Bogus purchases as finding of fact

LAWWORLD 2006 SC 1272

Held that whether there were bogus purchases is a pure finding of fact; with cogent reasons for rejecting books and no arbitrariness in best-judgment assessment, appellate interference was declined. Use on appeal to show that concurrent fact findings need a perversity or no-evidence challenge, not mere re-argument.

GP on rejected books bars further additions

LAWWORLD 2016 KAR 0737

Once books are rejected and GP estimated under Section 145(3), that rate covers infirmities; Revenue cannot rely on the same books for separate trade-creditor or closing-stock additions. Core authority against double counting after estimation.

Best-judgment estimation cannot be pure guess. It must rest on some material-prior results, comparable cases, local knowledge or proved suppression-with a rational nexus to the facts. *1957 SC on best judgment 1973 SC on scope of best judgment* Natural justice requires disclosure of departmental material used for the GP rate and a real opportunity to rebut. *Dhakeswari line on fair hearing in GP estimation* Partial relief is also available where vouchers support only part of cash or disputed purchases. *Karnataka HC on voucher-supported cash purchases*

TIP

Evidence that moves the needle

Build a quantitative bridge: purchase ledgers to GRNs, lorry receipts, weighment slips, quality reports, consumption in manufacturing, excise or e-way data, and stock tally to sales. Third-party bank RTGS trails and VAT/GST matching help more than bare confirmations. Inconsistency between alleged non-delivery and accepted closing stock or export packing lists is often decisive.

Model grounds - purchase disallowance

1. The CIT(A)/AO erred in treating purchases of Rs. ___ as bogus without demonstrating non-movement of goods or defect in quantitative stock and consumption records.
2. Full disallowance is unsustainable when sales, manufacturing and closing stock are accepted; at highest only a GP-element addition on disputed purchases is warranted.
3. No opportunity of cross-examination was granted in respect of third-party statements/investigation reports relied upon; addition violates natural justice.
4. Suppliers' identity, bank realisation and transport documents were on record; non-response to AO notice alone cannot brand purchases hawala.
5. Without prejudice, GP applied is excessive vis-à-vis assessee's own accepted history and comparable cases in the same line; rate of ___% may be substituted.
6. Once books were rejected and profit estimated, separate addition on the same purchase creditors/stock amounts to double addition and merits deletion.

Capital versus revenue characterisation on appeal

Characterisation disputes under Section 37 and related heads turn on whether the outlay is revenue (deductible) or capital (to be capitalised or disallowed as deduction). Classic tests-enduring benefit, once-for-all payment, and bringing a new asset into existence-are guides, not rigid masters. The aim and object of the expenditure in the commercial setting control. *1989 SC on flexible capital-revenue tests 1977 SC enduring-benefit application*

enduring benefit

A sufficient degree of durability of advantage to the business arising from an expenditure-not necessarily permanence-used as one indicator that the outlay may be capital rather than revenue in nature.

Once-for-all and enduring-benefit tests not conclusive

LAWWORLD 1989 SC 0343

No single definitive criterion separates capital from revenue; tests are useful servants but over-exacting as masters. Characterisation must respond to business realities and a common-sense reading of all features. Cite when the AO applies a mechanical 'enduring benefit' label.

Machinery replacement held capital

LAWWORLD 2009 SC 0764

Section 37 deduction requires revenue nature among other conditions. Replacement bringing a new asset and enduring advantage was held capital and not deductible. Use for replacement, expansion and new-capacity fact patterns.

Aim and object determine character

LAWWORLD 1977 SC 0125

Expenditure made to bring into existence an asset or advantage for the enduring benefit of the trade is ordinarily capital; aim and object of the outlay determine character. Useful for contributions, rights and infrastructure-linked spends.

Before CIT(A) and ITAT, frame the commercial purpose with board minutes, project notes, repair logs and accounting treatment consistent across years. Distinguish pure replacement of a worn unit in an existing profit-earning apparatus from expansion that creates fresh capacity. Consistency with books and prior accepted years undercuts sudden capitalisation by the AO.

Model grounds - capital versus revenue

- 1. The expenditure of Rs. ___ was incurred wholly and exclusively for business and is revenue in nature; it neither created a new asset nor conferred an enduring advantage beyond current operations.*
- 2. The AO misapplied the enduring-benefit test mechanically; aim and object show the outlay preserved existing earning capacity (repairs/replacement/operational rights).*
- 3. Without prejudice, if any portion is held capital, only that severable part may be disallowed; balance toward routine upkeep remains deductible.*
- 4. Accounting treatment and prior years' acceptance of similar spends support revenue characterisation; departure without fresh distinguishing facts is arbitrary.*

Practitioner checklist - purchase and characterisation appeals

- ☐ *Reconcile disputed purchases to stock, consumption and sales in one quantitative statement.*

- ☐ *Schedule third-party material (transport, bank, tax portals) and flag Rule 46A needs early.*
- ☐ *Plead primary case (genuine purchases / revenue spend) and alternate GP or partial capitalisation without admission.*
- ☐ *Attack double addition if GP estimation already absorbs book infirmities.*
- ☐ *For capital-revenue, document commercial object and compare with accepted history.*
- ☐ *Keep quantum grounds aligned with later penalty exposure (misreporting vs under-reporting).*

WARNING

Do not collapse forums or issues

Do not load this appeal with Section 68 share-capital themes or Section 148A jurisdictional attacks-those are structured elsewhere. Keep purchase and characterisation grounds fact-specific, quantitative and free of admissions that fix GP or capital character against you in the alternative plea.

11

Section 148A Reassessment on Appeal

Jurisdiction, procedure and merits after the new regime

The Section 148A sequence and what travels on appeal

After the Finance Act, 2021 substitution, reopening is no longer a single notice. The Assessing Officer must, where required, conduct inquiry, issue a show-cause under Section 148A(b), consider the assessee's reply, and pass an order under Section 148A(d) deciding whether it is a fit case to issue notice under Section 148, with prior sanction where the statute demands it. The assessment that follows is the appealable order under Section 246A or, for eligible cases, the DRP path; the 148A(d) order and the 148 notice are attacked as **jurisdictional defects** in that appeal (and, where still open, by writ).

Section 148A(d) order

The speaking order by which the Assessing Officer, after inquiry (if any), show-cause and consideration of the assessee's reply, records whether it is a fit case to issue notice under Section 148. Non-application of mind to the reply vitiates jurisdiction to reopen.

Information for reopening

The tangible material that the statute and the 148A process require the Assessing Officer to possess and evaluate before concluding escapement. Bare suspicion, borrowed conclusions, or material never put to the assessee will not sustain jurisdiction.

Post-amendment reopening chain

1. Information suggesting escapement comes on record
2. Inquiry under Section 148A(a) if the AO considers it necessary
3. Show-cause notice under Section 148A(b) with material relied upon
4. Assessee's reply with facts, law and quantitative rebuttal
5. Order under Section 148A(d) deciding fit case / not a fit case
6. Sanction under Section 151 where required; notice under Section 148
7. Return, assessment, then appeal on jurisdiction and merits

Duty to consider reply under Section 148A

Karnataka High Court, 2023

Section 148A requires enquiry if needed, show-cause, genuine consideration of the reply, and a decision on material including that reply. Where a detailed reply showing capital-gains computation and income below the extended-period threshold was ignored, the 148A(d) order was held vitiated for non-consideration and lack of application of mind-core appellate

ground.

LawWorld ID: LAWWORLD 2023 KAR 0511

Jurisdictional grounds versus merits grounds

Keep the two baskets separate in Form 35 and Form 36. **Jurisdictional grounds** go to the AO's power to reopen: absence of foundational information; failure to supply or confront material; non-consideration of the 148A reply; mechanical or invalid sanction; limitation under Section 149 including the Rs.50 lakh threshold for the extended period; and notice issued without a valid 148A(d) foundation. **Merits grounds** assume jurisdiction *arguendo* and attack the addition-valuation, characterisation, quantification, and evidence. Mixing them dilutes both.

WARNING

Do not collapse jurisdiction into merits

A CIT(A) or ITAT that upholds the addition without first deciding the 148A defects leaves a clear second-appeal point. Always seek a **finding** on each jurisdictional plea before the quantum discussion. Cross-refer penalty strategy under Section 270A only in the prayer cluster; doctrine belongs in the penalty chapter.

Ground type	What to plead	Typical relief
No / inadequate information	Material not specific, relevant or reliable; borrowed satisfaction	Quash reopening; annul assessment
Procedure under 148A	No proper show-cause; reply not dealt with; cryptic 148A(d)	Hold notice void; set aside assessment
Sanction / limitation	Mechanical approval; wrong authority; extended year without Rs.50 lakh escapement	Lack of jurisdiction
Merits of escapement	Income correctly offered; computation errors; third-party material unreliable	Delete or reduce addition

Reason to believe - relevance, not sufficiency

Supreme Court, 1981

Belief that income escaped must rest on relevant material with a rational nexus to the supposed escapement; it cannot be arbitrary. Appellate forums may test relevance and nexus even though they do not re-weigh sufficiency as on a full trial of facts.

LawWorld ID: LAWWORLD 1981 SC 0421

Legacy learning from the pre-148A era still guides older files and the structure of objections. Where reasons were furnished only after notice, the assessee was entitled to object and to a speaking disposal before assessment proceeded-principle affirmed in *the Supreme Court's 2002 restatement of AO obligations on Section 148 notices*. Use that discipline when attacking incomplete 148A(d) orders that never engage the reply.

Pleading at CIT(A) and ITAT; transitional notices

At the first appeal, open with a short jurisdiction cluster: (1) what information was

alleged; (2) what was actually shared with the show-cause; (3) what the reply demonstrated (especially figures defeating the extended period); (4) how the 148A(d) order ignored or misstated that reply; (5) sanction date, rank and reasons. Annex the full 148A paper trail. Then plead merits without waiving jurisdiction. Before the ITAT, convert each unanswered jurisdictional point into a distinct ground and seek annulment, not merely relief on quantum.

Reassessment appeal checklist

- ☐ Obtain and paginate: information note, 148A(b) notice, annexures, reply, 148A(d) order, sanction, 148 notice, reasons if separate
- ☐ Ground 1-n: information, confrontation, non-consideration of reply, sanction, limitation/threshold
- ☐ Separate merits grounds on each addition head
- ☐ Prayer: quash notice and annul assessment; alternatively delete additions
- ☐ Preserve consistency of facts with any earlier writ or objections
- ☐ Flag faceless record gaps (unsigned sanction, missing annexures) for adverse inference

Transitional Section 148 notices after 1-4-2021

Supreme Court, 2022

Notices issued on or after 1-4-2021 under the unamended Section 148 are not simply wiped out. The Court treated them as deemed Section 148A show-cause notices so that the new remedial procedure applies, while protecting Revenue from total remedilessness. Pending older disputes must be framed around compliance with the deemed 148A path and the Court's directions, not only around pre-amendment 'reason to believe' language.

LawWorld ID: LAWWORLD 2022 SC 0531

For assessments still alive from that transition, plead whether the AO thereafter conducted the 148A steps in substance-fresh opportunity, real consideration of reply, and a 148A(d)-type determination-before continuing. Where the AO merely re-issued Section 148 without curing the procedure, press nullity. Where the assessee slept on the deemed show-cause window granted by the Court, expect the Revenue to argue waiver; meet that with the actual record of what was filed and ignored.

TIP

ITAT emphasis

Tribunal grounds should lead with **jurisdiction**. Invite a finding that the 148A(d) order is void for non-application of mind on the lines of *the Karnataka High Court holding on reply consideration*, then argue merits in the alternative. That ordering protects the client if quantum views differ across benches.

High Court edges under Section 260A often turn on whether substantial questions arise on validity of the notice, change of opinion, and existence of escapement-questions the Supreme Court has treated as open for formulation when the High Court dismisses in limine. Build the ITAT record so those questions are already crystallised. Stay and quantum strategy remain as in earlier chapters; align any penalty exposure with Chapter

13 rather than overloading this appeal.



12

ITAT Practice: Form 36, Paper Book and Hearing

From filing to order under Section 254

Form 36, cross-objections and early hearing

Form 36 is the memorandum of appeal to the Income Tax Appellate Tribunal under Section 253. Unlike Form 35, it is addressed to a multi-member appellate body, must identify the **Bench**, the **assessment year**, the order appealed against (CIT(A), DRP-driven final order, or other specified orders), and the relief claimed with greater precision on disputed tax effect. Grounds should track the first-appeal record: retain numbering consistency where possible, drop grounds already allowed, and add only those that arise from the CIT(A) order or from issues left open.

Form 36

The statutory memorandum of appeal to the ITAT under Section 253, stating particulars of the appellant, the order impugned, grounds of appeal, and the relief sought, filed with the prescribed fee and enclosures.

Tribunal-specific filing traps (limitation having been covered earlier) include: mismatch between the certified copy of the order appealed against and the date entered in Form 36; incomplete address for service on the respondent Assessing Officer or CIT; failure to enclose the prescribed fee challan or to mark the correct Bench; and filing a single Form 36 for multiple assessment years without separate memoranda where required. Verify the appeal number, cause-title spelling, and PAN before the registry accepts the papers.

Cross-objection

A memorandum filed by the respondent under Section 253(4) within the prescribed time after notice of the appeal, seeking independent relief or support of the order on additional grounds, and disposed of by the Tribunal as if it were an appeal.

Cross-objections under Section 253(4) are available only in the situations the statute contemplates—appeals against orders of the CIT(Appeals) (or predecessor first appellate authorities) and specified DRP-linked appeals by the Assessing Officer. They are **not** maintainable in every ITAT proceeding. In an assessee's appeal against a revisional order under Section 263, Revenue cross-objections under Section 253(4) do not lie.

Scope of cross-objections under Section 253(4)

LAWWORLD 2016 KAR 015

Section 253(4) permits cross-objections only in appeals against orders of the Deputy Commissioner (Appeals), the Commissioner (Appeals), or where the AO appeals pursuant to DRP directions. In an assessee appeal against a Section 263 revisional order, Revenue cross-objections are not maintainable; the Tribunal's rejection on that ground was upheld.

Where cross-objections are maintainable, treat them with the same seriousness as an appeal: number grounds, state tax effect, and ensure the Tribunal disposes of them. Overlap with the main appeal does not excuse silence, though substance may cure a formal omission if every issue was in fact decided.

Disposal of cross-objections as if an appeal

LAWWORLD 2005 KAR 0625

A memorandum of cross-objections is to be disposed of as if it were an appeal. Where issues in the cross-objections were examined while deciding the main appeals and reliefs overlapped, failure to advert to them separately was held a minor irregularity that did not vitiate the order.

Apply for **early hearing** by a short miscellaneous application stating urgency-expiring stay, large recovery, recurring issue across years, or advanced age or illness of the assessee. Annex the stay order or recovery notice. Keep the prayer narrow: advance the date and, if needed, club connected appeals.

Paper book: rules and practitioner checklist

The paper book is the Tribunal's working set. It must be paginated, indexed, and served on the Departmental Representative in advance. Include only documents that form part of the assessment or first-appeal record, or that the Tribunal has admitted. Mark **Rule 46A** evidence distinctly so the Bench can see when and how it entered the record. Correspondence with the AO and CIT(A)-notices, remand reports, and written submissions-belongs in a separate tab.

TIP

Paper-book checklist

Index with exhibit numbers and page ranges **Continuous pagination** (Arabic numerals; avoid restarts mid-volume) **Certified copies** of the assessment order, CIT(A)/DRP order, and Form 36 as filed **Statement of facts and grounds** as before CIT(A) and as before ITAT **Notices, replies, remand reports** and hearing notices **Evidence admitted under Rule 46A** (application, AO comments, admission order, documents) **Correspondence** relied upon (with proof of service) **Written submissions** and case-law compilation (separate, tabbed) **Proof of service** of the paper book on the DR Matching **page references** in written submissions to the paper-book index

Before lodging the paper book

- ☐ Reconcile every page cite in grounds and written submissions to the index
- ☐ Exclude fresh documents not on record unless a formal additional-evidence

application is filed

- ☐ Bind volumes so that certified orders appear first, then pleadings, then evidence
- ☐ Serve the DR within the Bench's usual lead time; retain acknowledgment
- ☐ File a thin core book for the Members and fuller sets only if directed

Hearing, additional grounds and the Section 254 order

Hearing practice before the ITAT is oral and issue-led. Open with the tax effect and the two or three decisive grounds. Take the Bench through the paper-book pages, not a narrative re-argument of Form 35. The Departmental Representative is entitled to a fair opportunity to respond; if new paper is allowed, expect a short adjournment or written reply directions. Remand for fresh fact-finding remains available where mixed questions require a fuller record.

Tribunal to decide afresh with opportunity to parties

LAWWORLD 2017 SC 089

Where the dispute involves mixed questions of law and fact, the Supreme Court left all issues to the Tribunal to decide afresh on merits after giving parties opportunity to file relevant documents, underscoring full opportunity and time-bound disposal on remand.

Additional grounds before the Tribunal

Grounds not raised before the CIT(A) that the ITAT may still admit if they are pure questions of law arising from the record, or questions the Tribunal considers necessary for determining the real tax liability, subject to notice to the other side.

Move additional grounds by a separate application explaining why they were not urged earlier and why the record already supports them. Pure legal grounds (jurisdiction, limitation on the face of the order, chargeability) stand on a stronger footing than fact-heavy pleas that need new evidence. Never ambush the DR on the day of hearing without a filed application.

Structure of an order under Section 254

Typical Section 254 order architecture

1. Cause-title, appeal number, assessment year, and appearance of parties
2. Brief facts and the orders of the AO and CIT(A)/DRP pathway
3. Grounds pressed at hearing (and grounds withdrawn or not pressed)
4. Issue-wise reasoning with page references to the paper book
5. Findings on additional grounds or additional evidence, if any
6. Operative directions: allow, partly allow, dismiss, or remand
7. Consequential directions on tax computation and, where relevant, stay or costs

Under Section 254 the Tribunal may pass such orders as it thinks fit after giving both sides an opportunity of being heard. A clear operative portion-ground-wise allow/dismiss/remand-avoids later rectification disputes. If cross-objections were filed, the order should show they were considered, even if relief merges with the main appeal.

Pronouncement may be in open court or on a fixed date; collect the certified copy promptly for any further challenge or for giving effect before the AO.

WARNING

Practice caution

Do not treat the ITAT hearing as a second Form 35 drafting exercise. Inconsistency between the facts stated before CIT(A) and those in Form 36 invites adverse comment. Keep the paper book lean, the additional-grounds application reasoned, and the prayer aligned with what Section 254 can actually grant in the appeal before the Bench.



13

Penalty Appeals under Sections 270A and 271

Quantum appeal first, penalty appeal next

Quantum first: how penalty appeals ride the addition

Penalty under Section 271(1)(c) or Section 270A is levied on the income that survives assessment. File and prosecute the quantum appeal first; the penalty appeal is protective and secondary. Partial or full relief in quantum automatically shrinks or extinguishes the penalty base. Do not re-argue the addition on merits inside the penalty memo-cross-refer the quantum grounds and pray for consequential deletion.

Quantum appeal

The appeal against the assessment or reassessment order that determines the income on which penalty may later be computed; its outcome controls the penalty base.

Penalty appeal

The separate appeal against the order imposing penalty under Section 271(1)(c) or Section 270A, filed on Form 35 (CIT(A)) or Form 36 (ITAT) against that discrete order.

TIP

Sequencing

File the penalty appeal within limitation even if quantum is pending. Seek clubbing or adjournment of the penalty appeal until the quantum appeal is decided, so the first appellate authority or ITAT can apply consequential relief without a second round of evidence.

Satisfaction for penalty must be recorded by the authority in whose proceedings concealment or under-reporting is found. Where the appellate authority first finds the default, that authority-not the Assessing Officer-must initiate and levy. **LAWWORLD 2012 KAR 1214 ; LAWWORLD 1972 SC 0929 .**

Limitation, forms and initiation traps

Appeal the penalty order on the same forms used for quantum: Form 35 before CIT(A) under Section 246A, and Form 36 before the ITAT under Section 253. Limitation runs from communication of the penalty order, not the assessment order. Apply the condonation principles already covered for quantum appeals if delay arises.

On the Revenue side, Section 275 clocks the outer time to pass the penalty order. Where Section 275(1)(c) applies, penalty must be levied within the longer of the period tied to the financial year of the related proceedings or six months from the end of the month of initiation; orders beyond that window are bad. **LAWWORLD 2002 KAR 1018 ;**

LAWWORLD 2003 KAR 1076 .

Penalty-appeal filing checklist

- ☐ Attach the penalty order and the related assessment/appellate order
- ☐ State limitation from service of the penalty order
- ☐ Cluster grounds: jurisdiction/initiation, classification (concealment vs inaccurate particulars; under-reporting vs misreporting), bona fides, quantum linkage
- ☐ Pray for stay of penalty demand separately if recovery is pressed
- ☐ Flag any Section 275 bar on the face of the record

Section 271(1)(c) versus Section 270A: concepts that drive grounds

Older Section 271(1)(c) turns on concealment of particulars of income or furnishing of inaccurate particulars . The two limbs are not interchangeable. Concealment points to a deliberate act; mere omission or debatable claim is not automatically suppressio veri. The Department bears the primary burden to show how and in what manner particulars were concealed or rendered inaccurate before Explanation 1 can deem income concealed. *LAWWORLD 2007 SC 05146 ; LAWWORLD 2007 SC 05148 .*

Under-reporting (Section 270A)

The base default under Section 270A where income assessed exceeds income returned (or income is assessed for the first time); ordinary rate is 50% of tax on under-reported income, subject to statutory exclusions and immunity routes.

Misreporting (Section 270A)

Aggravated under-reporting falling in the specified misreporting categories (false entry, omission of entry, non-reliable books, mischaracterisation, and allied limbs); attracts 200% of tax on the misreported amount and blocks standard immunity.

Section 270A replaces the concealment vocabulary with under-reporting and misreporting. Classification is the live contest: if the addition is only under-reporting, the 50% rate and immunity pathway remain open; if the order labels misreporting without fitting a statutory limb, attack the label on appeal. Do not concede misreporting in quantum submissions-those words migrate straight into the penalty file.

Under the Explanation to Section 271(1)(c), a rebuttable presumption of concealment can arise in prescribed shortfall situations, but only cogent material displaces it; a finding that the assessee's explanation is false keeps the presumption alive. *LAWWORLD 1990 SC 071 .* Surrender after detection is not voluntary and will not save penalty. *LAWWORLD 2013 SC 1049 .*

WARNING

Notice limb must match the finding

If the penalty notice invokes one limb (concealment) and the order rests on the other (inaccurate particulars), or if satisfaction is mechanical, press invalidity of initiation. High Courts have declined to disturb Tribunal deletions where notice or concealment findings fail. *LAWWORLD 2015 KAR 0923 ; LAWWORLD 2015 KAR 0323 .*

Immunity, classification contests and model grounds on partial quantum relief

At a practical level, Section 270AA immunity is available against under-reporting penalty where tax and interest are paid within the stipulated time, no appeal is filed on the relevant addition, and the case is not one of misreporting. Weigh immunity against the strength of the quantum challenge: accepting immunity locks the addition; fighting quantum preserves the penalty fight but needs a protective penalty appeal.

Penalty strategy after quantum order

1. Read the penalty order: which section, which limb, what amount, what satisfaction language
2. Map each penalty amount to a live quantum ground still in appeal
3. If immunity under Section 270AA is still open and misreporting is not alleged, decide accept-vs-fight within the statutory window
4. File Form 35/36 on the penalty order within limitation with quantum-linkage grounds
5. Seek adjournment or clubbing until quantum disposal
6. On partial quantum relief, move consequential deletion of proportionate penalty

Model ground clusters (penalty deletion on partial relief)

- **Jurisdictional:** The penalty notice and order fail to specify the limb; satisfaction is not recorded in the course of the relevant proceedings by the competent authority.
- **Classification:** The addition, if any survives, is a bona fide claim fully disclosed in the return and notes; it is neither concealment/inaccurate particulars under Section 271(1)(c) nor misreporting under Section 270A.
- **Quantum linkage:** Penalty is levied on Rs.____ attributable to [addition]. CIT(A)/ITAT having deleted/reduced that addition to Rs.____, penalty on the relieved portion is unsustainable and must be cancelled proportionately.
- **Bona fides / Explanation:** Full particulars and primary facts were disclosed; the explanation is bona fide and substantiated; Explanation 1 deeming does not apply.
- **Limitation:** The penalty order is barred under Section 275 on the dates of initiation and levy.

Penalty under s.271(1)(c) - burden and Explanation 1

LAWWORLD 2007 SC 05146

Primary burden is on the Revenue to establish concealment or inaccurate particulars on evidence; Explanation 1 shifts a secondary burden only after the assessee's explanation is found false or not bona fide with material facts withheld. Use this to structure deletion grounds when disclosure was complete.

Concealment versus inaccurate particulars

LAWWORLD 2007 SC 05148

The two limbs carry different connotations; concealment is deliberate, and mere omission or negligence is not enough. Cite when the AO equates every addition with automatic penalty.

NOTE

Partial relief arithmetic

When quantum is partly relieved, compute penalty only on the sustained income and only at the rate matching the surviving classification (50% under-reporting versus 200% misreporting, or the Section 271(1)(c) range). Ask the appellate authority to recompute rather than remand if the record is clear.

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High Court under Section 260A and Writ Edges

Substantial question of law, stay pending further challenge, and limits of Article 226

When Section 260A opens: substantial question of law

An appeal under Section 260A lies only if the case involves a **substantial question of law**. The right is statutory, not inherent. The High Court cannot re-appreciate evidence or disturb Tribunal findings of fact unless they are perverse, based on no evidence, ignore relevant admissible material, rest on inadmissible material, or misapply legal principle. Concurrent fact findings that the assessee failed a statutory onus ordinarily end the matter.

substantial question of law

A question that is debatable, not already settled, of real substance, and materially affects the parties' rights. Mere mixed questions of fact and law answerable by re-examining the evidentiary record fall outside Section 260A.

Scope of substantial question under Section 260A

LAWWORLD 2010 SC 1234

Appeals lie only on a substantial question of law; formulation is mandatory once the High Court is satisfied. A fact finding yields such a question only where based on no evidence, relevant evidence is ignored, inadmissible evidence is used, or legal principles are misapplied.

Mixed questions outside Section 260A

LAWWORLD 2022 KAR 0751

Section 260A is analogous to Section 100 CPC. Questions that essentially require re-ascertainment of facts and application of settled principles are outside the High Court's appellate precinct.

Erroneous exercise of Tribunal discretion may still raise a point of law where it is unreasonable, self-misdirected, rests on irrelevant considerations, or produces manifest injustice- **discretion vitiated by legal error**. Orders under Section 254(2) rectifying or annulling an earlier appellate order are appealable as orders made "in appeal" **254(2) appealable**. Forum is fixed by the **situs of the Assessing Officer** who passed the assessment order, not by ITAT Bench location or Section 127 transfer **situs rule**.

Formulating questions and High Court procedure

The memorandum must **precisely state** the substantial questions proposed. Distinguish questions the appellant proposes under Section 260A(2)(c) from questions the Court frames under Section 260A(3). The appeal is heard on merits only on questions the Court frames. If no substantial question arises, the Court must record that finding and dismiss in limine-not hear bipartite and dispose without framing.

Mandatory framing under Section 260A(3)

LAWWORLD 2019 SC 0557

The High Court must admit and frame substantial questions under sub-section (3). Hearing and deciding on questions merely proposed by parties, without Court framing, violates the mandatory procedure.

In limine dismissal or framed hearing

LAWWORLD 2019 SC 0432

If no substantial question arises, record a categorical finding and dismiss in limine. Issuing notice and deciding without admission or framing is unsustainable.

Drafting substantial questions

- ☐ Anchor each question to a specific legal error in the Section 254 order-not a narrative of facts.
- ☐ State the debatable proposition of law and why it materially affects tax or liability.
- ☐ Avoid pure appreciation questions (sufficiency, reliability, weight of evidence).
- ☐ Flag perversity only with a pleaded foundation: no evidence, ignored evidence, or misapplied principle.
- ☐ Do not treat settled-law application to concurrent facts as a fresh substantial question.

Limitation, stay pending further challenge, and writ edges

File the Section 260A memorandum within the **statutory limitation period** running from the Tribunal order. Delay needs a condonation plea showing sufficient cause and diligence-the principles already taught for lower forums travel to this edge. Exact clocks, fees and formats are consolidated in the Ready Reckoner chapter.

Interim protection pending further challenge is ordinarily sought **within the appellate hierarchy**, not by short-circuiting to writ. Article 226 remains discretionary; where the taxing statute supplies an adequate appellate or reference path, the High Court may refuse writ interference **discretion and alternate remedy**. Petitioners should not bypass the statutory mechanism **no short-circuit of tax appeals**. Writ interference with stay orders or the appellate process is correspondingly narrow-reserved for want of jurisdiction, patent illegality, or breach of natural justice, not a second appeal on facts.

WARNING

Do not treat writ as a parallel stay forum

Build the stay record before the AO, CIT(A) and ITAT as earlier chapters require. A Section 260A filing does not automatically stay demand. Reach for Article 226 against recovery or appellate process only when the statutory path is inadequate or the order is facially without jurisdiction.

Section 260A path in brief

1. *Test the ITAT order for a debatable, material question of law-not fact re-appraisal.*
2. *Draft precise proposed questions; fix forum by AO situs.*
3. *File within limitation; annex condonation if delayed.*
4. *Court admits and frames questions under Section 260A(3), or dismisses in limine with reasons.*
5. *Hearing and decision only on framed questions; seek stay in the hierarchy unless writ is truly exceptional.*

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Ready Reckoner: Limitation, Fees, Circulars and Templates

Desk charts for filing day

Limitation and fee matrix

Use the charts below on the day the order is received. Compute limitation from the date of communication or service as taught earlier; do not reverse-engineer from the order date alone. Fees track the statutory scale for the forum and the nature of the order under challenge.

Forum	Outer limit (ordinary)	Key trigger	Fee / pre-condition note
CIT(A) - quantum / penalty	30 days	Communication of appealable order	Form 35; tax due on returned income under s.249(4) must be paid before admission
DRP objections (s.144C)	30 days	Receipt of draft order	Objections in prescribed form; no Form 35 fee
ITAT - s.253 appeal / C.O.	60 days / 30 days	Communication of CIT(A) or final AO order post-DRP	s.253(6) scale; condonation-refusal appeals attract clause (d) fee
High Court - s.260A	120 days	Receipt of ITAT order	Court fee as applicable on relevant date; frame substantial question(s) of law
Stay before AO / CIT(A) / ITAT	With or soon after appeal	Demand notice / recovery steps	No separate statutory fee scale; attach appeal proof and payment challans

NOTE

ITAT fee on non-quantum orders

Where the subject-matter is not assessed income under s.253(6)(a)-(c)-for example an order refusing to condone delay-only the clause (d) fee applies. See [Karnataka High Court on s.253\(6\)\(d\)](#) .

WARNING

Mandatory pre-admission tax

Section 249(4) conditions the competence of CIT(A) to admit the appeal on payment of tax due on income returned. Non-payment invites dismissal in limine. *Block-assessment illustration* ; allied wealth-tax holding in *s.23(2A) W.T. Act* .

For Section 260A court fee, the applicable provisions for an assessee's appeal are those in force on the date of the assessment order; for a revenue appeal, those in force when the appellate authority negated the demand. *Supreme Court on relevant date for court fee* . High Court territorial jurisdiction follows the situs of the Assessing Officer who passed the assessment order. *Situs rule under s.260A* .

Forum-wise filing checklists

CIT(A) - Form 35 day-of-filing

- ☐ Appealable order, notice of demand, and proof of communication date on file
- ☐ Tax on returned income paid; challan attached (s.249(4))
- ☐ Limitation particulars filled; condonation affidavit ready if delayed
- ☐ Statement of facts consistent with assessment record; grounds numbered and clustered
- ☐ Prayer tracks each ground; no unintended admissions
- ☐ Digital upload complete; acknowledgement saved

DRP objections

- ☐ Draft order date and service proof verified within 30-day window
- ☐ Objections point-wise against each proposed variation
- ☐ Evidence and legal propositions scheduled; copy to AO as required
- ☐ Diary final-order date after directions for ITAT clock

ITAT - Form 36 and paper book

- ☐ Form 36 fields aligned to Form 35 facts; cross-objection window noted
- ☐ Correct s.253(6) fee-including clause (d) where appeal is only on condonation refusal
- ☐ Paper book: index, pagination, certified copies, Rule 46A evidence, correspondence
- ☐ Early-hearing or stay application filed with appeal where recovery is live

High Court - s.260A and penalty appeals

- ☐ Draft substantial question(s) of law; reasons for admission ready
- ☐ Limitation 120 days from receipt; condonation if needed
- ☐ Court fee computed on correct relevant date; situs of AO confirmed
- ☐ Penalty appeal: link to quantum outcome; distinct mens rea / misreporting grounds
- ☐ Interim protection sought in proper appellate hierarchy first

Ground-numbering convention

Number grounds G1, G2... in logical clusters (jurisdiction limitation/reopening each addition consequential interest/penalty). Use sub-grounds G1.1, G1.2 for limbs of one issue. Keep the same numbers from Form 35 through Form 36 and written submissions so the record cross-refers cleanly.

Stay and recovery: CBDT chart and templates

Instrument	Core content	Practice point
Instruction No. 1914	Stay guidelines; high-pitched assessment; genuine hardship	Still operative on hardship and high-pitch factors
CBDT communication 29-2-2016	Partial modification; ordinary lump-sum (e.g. 15%) of disputed demand	Does not wipe out 1914; AO/Pr. CIT must still examine hardship and high-pitch
AO stay under s.220(6)	Treat assessee as not in default pending appeal	File with appeal; attach prima facie note and payment proof
CIT(A) / ITAT incidental stay	Prima facie case, balance of convenience, irreparable hardship	Extend Tribunal stay before outer period lapses

CBDT Circular No. 1914 and circular dated 29-2-2016 - interplay

High Court of Karnataka, 2017

The 29-2-2016 circular only partially modifies Instruction 1914 and standardises lump-sum payment; Instruction 2-B(iii) on unreasonably high-pitched assessment and genuine hardship continues to bind the AO and Principal CIT on every stay application.

LawWorld ID: LAWWORLD 2017 KAR 021

Skeleton stay application

1. **Cause title** - assessee, PAN, AY, appeal number / Form 35 or 36 acknowledgement, AO ward.
2. **Demand particulars** - assessed income, tax, interest, amount paid, balance disputed demand.
3. **Prima facie case** - three to five bullet holdings or record defects (jurisdiction, high-pitch, covered issues).
4. **Balance of convenience / hardship** - cash flow, attachment risk, business continuity; quantify.
5. **Offer** - percentage already paid or proposed; undertake to cooperate in early hearing.
6. **Prayer** - stay recovery / treat as not in default till disposal; interim protection in the meantime.
7. **Annexures** - order, demand notice, appeal proof, challans, financials, earlier stay orders.

Short condonation affidavit outline

1. Deponent identity and authority to affirm.
2. Date of order, date of actual receipt/communication, and how service is proved.

3. *Day-count to filing; exact days of delay.*
4. *Facts constituting sufficient cause (illness, wrong forum, counsel error, late certified copy)-chronology with dates.*
5. *Diligence after knowledge; absence of malafides; prejudice if delay not condoned.*
6. *Prayer to condone delay and admit appeal; verification.*

TIP

Filing-day discipline

*File the appeal, condonation (if any), and stay together. Keep ground numbers frozen from the first Form 35. Where a writ court has granted liberty to approach the ITAT within a fixed window, diary that outer date and comply with all other statutory conditions. **Liberty with timed ITAT filing** .*

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Practice Pointers, Common Pitfalls and Outlook

Closing synthesis for the working advocate

Operating rules for every appeal

Treat the appellate ladder as one continuous record. File protectively whenever limitation, forum choice, or service is doubtful. Never let a wrong-forum or delayed filing become a final bar because a protective appeal was not lodged. Preserve one consistent statement of facts from Form 35 through Form 36 and any High Court memorandum-contradictions destroy credibility faster than weak law.

1. **File protectively** - when in doubt on limitation, service, or forum, file and seek condonation rather than wait.
2. **Keep facts consistent** - the same narrative must travel from CIT(A) to ITAT to Section 260A without silent revisions.
3. **Separate jurisdiction from merits** - plead reopening, sanction, and limitation defects as freestanding grounds, not buried inside quantum argument.
4. **Build the stay record early** - prima facie case, hardship, and partial payment evidence should be ready with the appeal, not after recovery pressure.
5. **Align quantum with penalty** - every concession or partial relief on quantum must be mapped to under-reporting versus misreporting exposure under the penalty appeal.

Maintainability gates are not drafting footnotes. Tax due on returned income must be paid before the first appeal is admitted; non-compliance is fatal. *The Karnataka High Court* has treated the pre-deposit condition under Section 249(4) as mandatory. At the Tribunal, expect disposal on merits even on non-appearance-the final fact-finding body is obliged to decide the subject-matter, not merely default the appellant, as held in *the Supreme Court's reading of the Tribunal's duty*.

Pre-deposit under Section 249(4) - maintainability

LAWWORLD 2006 KAR 1127

Admission of appeal before CIT(A) is conditional on payment of tax due on returned income; the requirement is mandatory. Build fee-and-tax compliance into the filing checklist before grounds are finalised.

Recurring drafting and limitation pitfalls

Traps that still cost appeals

- ☐ Mixing jurisdictional and merits grounds in a single unnumbered paragraph.
- ☐ Argumentative 'statement of facts' that admits quantum or shifts onus.
- ☐ Missing or miscalculated limitation from actual service or communication of the order.
- ☐ Condensation affidavits that narrate delay without diligence dates.
- ☐ Stay applications filed without hardship evidence or without linking to disputed demand percentage.
- ☐ Paper books without pagination, index, or Rule 46A admitted material.
- ☐ Penalty grounds that ignore the quantum order's surviving additions.
- ☐ Section 260A memos that argue facts instead of framing substantial questions of law.

At the High Court edge, an appeal under Section 260A succeeds or fails on properly framed substantial questions of law and reasoned disposal-not on a second round of fact appreciation. *The Supreme Court* has restated that the High Court may dismiss in limine for want of a substantial question, or allow only after framing and hearing on such questions. Draft the questions before you draft the narrative.

Section 260A - framing substantial questions of law

LAWWORLD 2019 SC 02109

High Court disposal under Section 260A turns on framing and answering substantial questions of law (or holding that none arise). Use this as the drafting discipline for every ITAT-to-High Court step.

WARNING

Do not reopen settled structure

This chapter adds no new limitation periods, fee schedules, or addition-specific grounds. Use the Ready Reckoner and the dedicated drafting chapters. The failure mode is almost always process discipline, not absence of a novel citation.

Outlook and closing discipline

Faceless appeal practice and digital paper books are the working direction of the system: electronic filing, remote hearings, and paginated digital records are already the default habit a careful advocate should assume. Prepare every annexure as if the Bench will see only the e-book you upload-clear index, bookmarks, and consistent exhibit labels. Do not premise strategy on promised amendments; premise it on clean records that survive any interface.

Protective appeal

An appeal filed within limitation (or with a candid condonation plea) to preserve the client's remedy where forum, service, or parallel proceedings create a real risk that the primary challenge may be held non-maintainable or out of time.

Before you file the next appeal

- 1. Identify the appealable order, forum, and limitation trigger from service or communication.*
- 2. Pay tax on returned income and compute filing fee; diary the last date.*
- 3. Lock one statement of facts; number jurisdiction grounds separately from merits.*
- 4. Assemble stay evidence and partial-payment proposal with the appeal papers.*
- 5. Map each quantum ground to penalty exposure and note immunity or classification points.*
- 6. Build the digital paper book index as you draft-do not retrofit after hearing notice.*

The handbook ends where practice begins: one protective filing, one consistent record, jurisdiction pleaded cleanly, stay built early, and quantum never argued in isolation from penalty. Apply that discipline to the next appeal on your desk.

Disclaimer

This publication is for professional information and education only. It is not legal advice and does not create an advocate-client relationship. Statutes, rules, circulars and judicial positions change; readers must verify the current text of the Income-tax Act, 1961, the Income-tax Rules, 1962, CBDT instructions and the law as applied by the competent court or tribunal on the facts of each matter before acting. LawWorld and the authors accept no liability for loss arising from reliance on this material without independent professional advice.

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