

Representation in Appeals – CIT(A)

**CA. Ashish Goyal,
Advocate**

Law and Procedure of Appeals

CIT(A)

- Section 246A-251
- Rule 45-46A of Income-tax Rules
- Appeal to ITAT, High Court and Supreme Court

Data of Pending Appeals

Data of March 2025 (based on RTI)

- Total pending appeals – 5,40,041 [of which 3,66,708 are faceless]
- New filings (faceless) in 2024-25 – 89,328. Disposals in 2024-25 – 85,828.
- New filings (Central) in 2024-25 – 91,924

Letter also written by AIFTP to Hon'ble FM.

Law and Procedure of Appeals

Step 1

- Identify fit case for appeal/ revision etc.

Step 2

- Identify appellable orders

Step 3

- File appeal

Step 4

- Hearing of Appeal

Step 5

- Remand and other proceedings

Step 6

- Appeal Order

Step 7

- Further Action

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Fit case for appeal

- At first instance read the order/ intimation.
- Find errors of
 - fact
 - law
 - proceduresin order/ intimation.
- Check relevant course of action.

Fit case for Appeal

- Small Tax effect, but recurring
- Risk of penalty/ prosecution
- Agreed Additions
 - On facts *[Deep Kukreti 53 taxmann.com 161 (Utt.)]* – unless concession wrongly recorded/coerced.
 - On law.

Fit case for Appeal

- Remember : appeal filed cannot be withdrawn at instance of assessee

CIT vs Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)

- Power of “enhancement”

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Appellable Orders

- Appeal is a statutory right not a born right
- Check Section 246A
- Appeal in case of
 - TDS/ TCS intimation
 - 143(1)
 - 234E - appellable
 - Non-grant of refund
 - Penalty 271FA - *Raibarreilly Dist. Cooperative Bank Ltd. 54 taxmann.com 382 (Luck.) – not free from doubt. See SRO, Meppayur-Kozhikode 37 taxmann.com 36 (Cochin)*

Remember there is no appeal against s. 119(2), 264. Order of CIT like 12AB, 80G, 263 are directly appellable to ITAT.



- Identify fit case for appeal/ revision etc.



- Identify appellable orders



- File appeal



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Filing of Appeal

Factors relevant for filing appeal

1. Form
2. Sign
3. Fees
4. Time Limit
5. Upfront fees

Documents to file

- Form No. 35
- SOF
- GOA
- Notice of demand
- Impugned order
- In case of penalty, assessment and penalty order.

Form for filing appeal to CIT(A)

- New Form 35
- Appeal to be filed online – mandatory for cases where e-return to be filed.
- Check PDF

SOF and GOA

- SOF
 - Word limit 1000 words
 - PDF to be uploaded
 - Facts should be clear and precisely written. Try not to commit anything at this point.
 - In case no OObH, same should be brought out in SOF

SOF and GOA

- GOA
 - Word limit 100 words per GOA
 - Section in which addition made
 - Precise, concise and apt
 - Alternative pleas in separate GOA
 - Dont miss any GOA
 - At end, carve leave to add/ amend/ modify/ delete any GOA

Who can file appeal?

- Any assessee “aggrieved”
- Third party
 - Legal heir
 - Liquidator/ IP under IBC
- Check for Power of Attorney in such cases
- Appeal against agreed additions

Signature on appeal

- Person who can sign return
- Can CA/ Advocate sign
- Defect in appeal vs Defect in signature

Fees

- Section 249
- Shortfall in fees to be notified
- Challan for fees – self assessment (~~400~~500)
- Assessed income loss – fees shall be min.

Time Limit

- 30 days from date of service of order/ demand notice
- Delay if any can be condoned by CIT(A), if there is “sufficient cause” for delay.

Condonation of Delay

- Sufficient cause is a question of fact.
- *Collector, Land Acquisition Vs. Mst. Katiji & Ors.* 167 ITR 471 (SC)
 - “(i) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
 - (ii) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*
 - (iii) “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.*
 - (iv) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

Condonation of Delay

- (v) *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
- (vi) *It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.”*
- Wrong advice given to the appellant – *R.Ranganayaki Ammal 38 ITR 20 (Mad.)*
 - Conflicting legal advices - *Smt. Laxmi Devi AIR (1988) (All.) 133*
 - Challenge before Wrong forum. *Albert Franics Lobo 113 Taxman 582 (Gau.)*
 - *Nilesh Ajmera (MP) – delay of around 1800 days, as assessee was in jail or absconding.*

Upfront Fees

- Section 249
- Return filed – tax on returned income
- Return NOT filed – advance tax payable
- Return NOT filed – apply for filing appeal without upfront fees

Points to remember for filing appeal to CIT(A)

- On receipt of order of AO, note the date of service of order and demand notice.
- List out additions made.
- Check jurisdictional issues like service of notice u/s. 143(2); u/s. 148 etc.
- Check if order appellable
- Check if Interest, tax, demand computed is correct. TDS credit, loss etc may be missed.
- Prepare a reconciliation of returned income and tax and assessed income and tax.
- For apparent errors, also file 154 application.

Points to remember for filing appeal to CIT(A)

- Check if any document referred, copy of which not supplied.
 - Mention in SOF
 - Apply for copy of same.
- Prepare SOF and GOA
- GOA shall be simple, concise, aptly worded and shall cover the entire issue involved.
- After raising GOA, crave leave to add, amend, modify alter, or delete any ground of appeal.
- Alternative pleas may be taken as GOA, “without prejudice”.
- Pay appropriate appeal fees.
- Dont use special characters.

Further actions required

- File application to AO to keep penalty u/s. 271(1)(c)/ 270A in abeyance
- Filing appeal does not mean that demand stayed. Apply to AO for stay. Discussed separately.



- Identify fit case for appeal/ revision etc.



- Identify appellable orders



- File appeal



- Hearing of Appeal



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- Appeal Order



- Further Action

Procedure for Hearing

- There are two mechanisms – **Physical (Central Circle and International Taxation cases)** and **Virtual (for other cases)**
- Paper book
- Written Submissions
 - Undisputed Facts, AO's arguments, our submissions, case laws, case laws of AO distinguished
- Arguments – Ground-wise
 - Official Bias
 - Reply to queries raised by CIT(A)
 - Do not get provoked by seemingly irrelevant queries
 - Avoid unnecessary arguments and altercations
 - Make special efforts in emphasizing as to how and why AO was wrong based on facts and documentary evidences/ legal position.
 - Through with facts and law
- Notice to appellant and AO (ITNS 51)

Procedure for Hearing

- Story should be logical/ backed by evidence
- Cross-examination/ retraction
- Apply for copy of 148 reasons, documents used against you
- Never concede
- Change of stand - impossible to prove
- Note sheet – mirror of proceedings

Procedure for hearing

- Powers to do inquiry
 - He can do inquiry himself
 - He can get in done through Remand
- Powers are coterminous
- High Demand cases/ Senior Citizen cases to be heard out of turn. [CBDT Guidelines in F.No. 279/ Misc./ M-102/ 2021-ITJ]. Interestingly, it also gives priority to VIP/ PMO reference cases.

Procedure for hearing

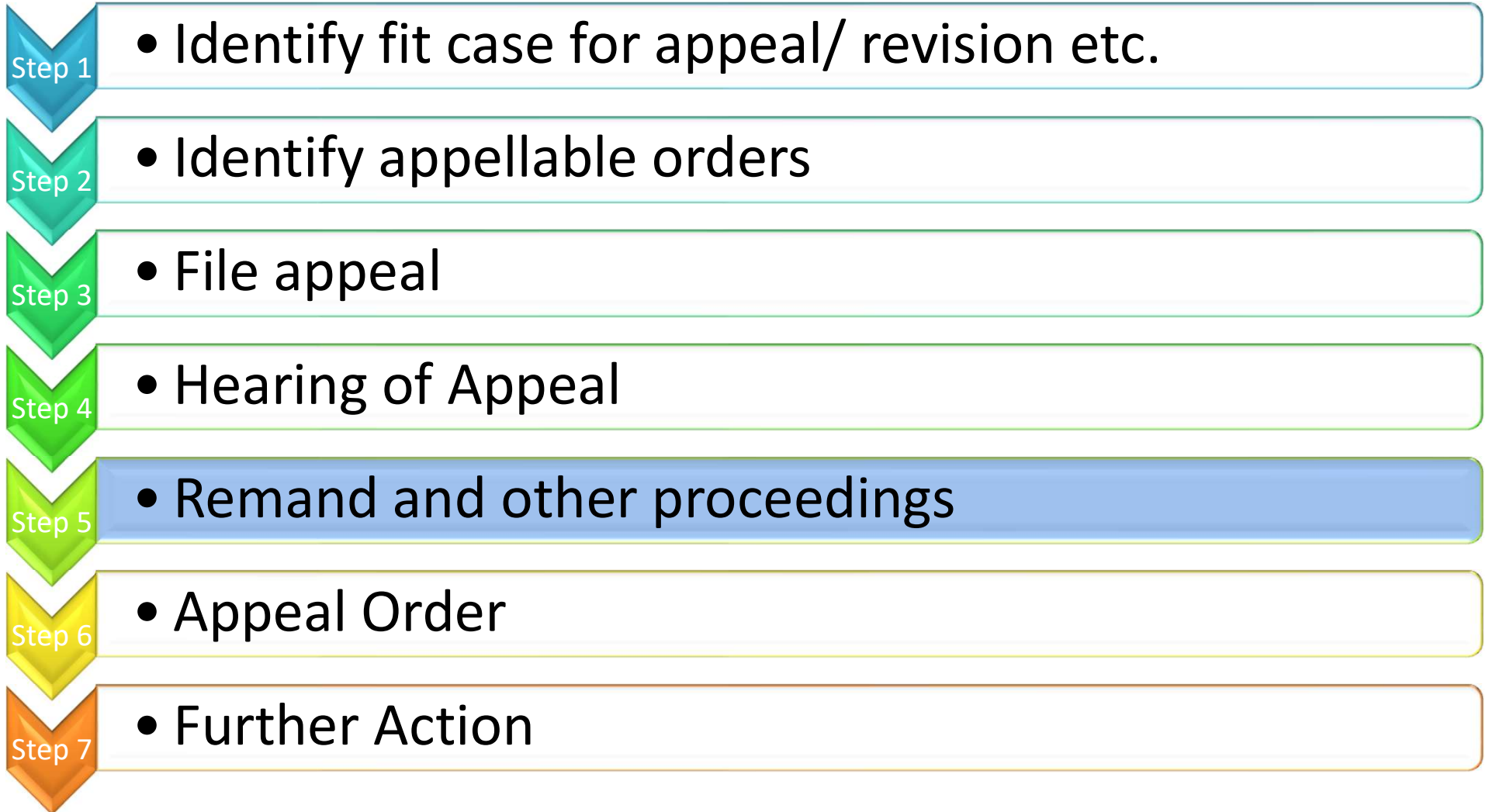
- In faceless proceedings, please take care
 - Enablement of Communication
 - Hearing notices (*ex-parte*)
 - Login regularly or use softwares
 - Adjournments -15 days
 - In WS, invariably request for VC.

Additional GOA

- When GOA not taken in Original GOA
- Separate application
- Claim not even in return can be made as additional ground. *CIT vs Pruthavi Brokers and Shareholders 349 ITR 336 (Bom.); Ashok Keshavlal Tejuja 91 taxmann.com 28 (Mum.)*

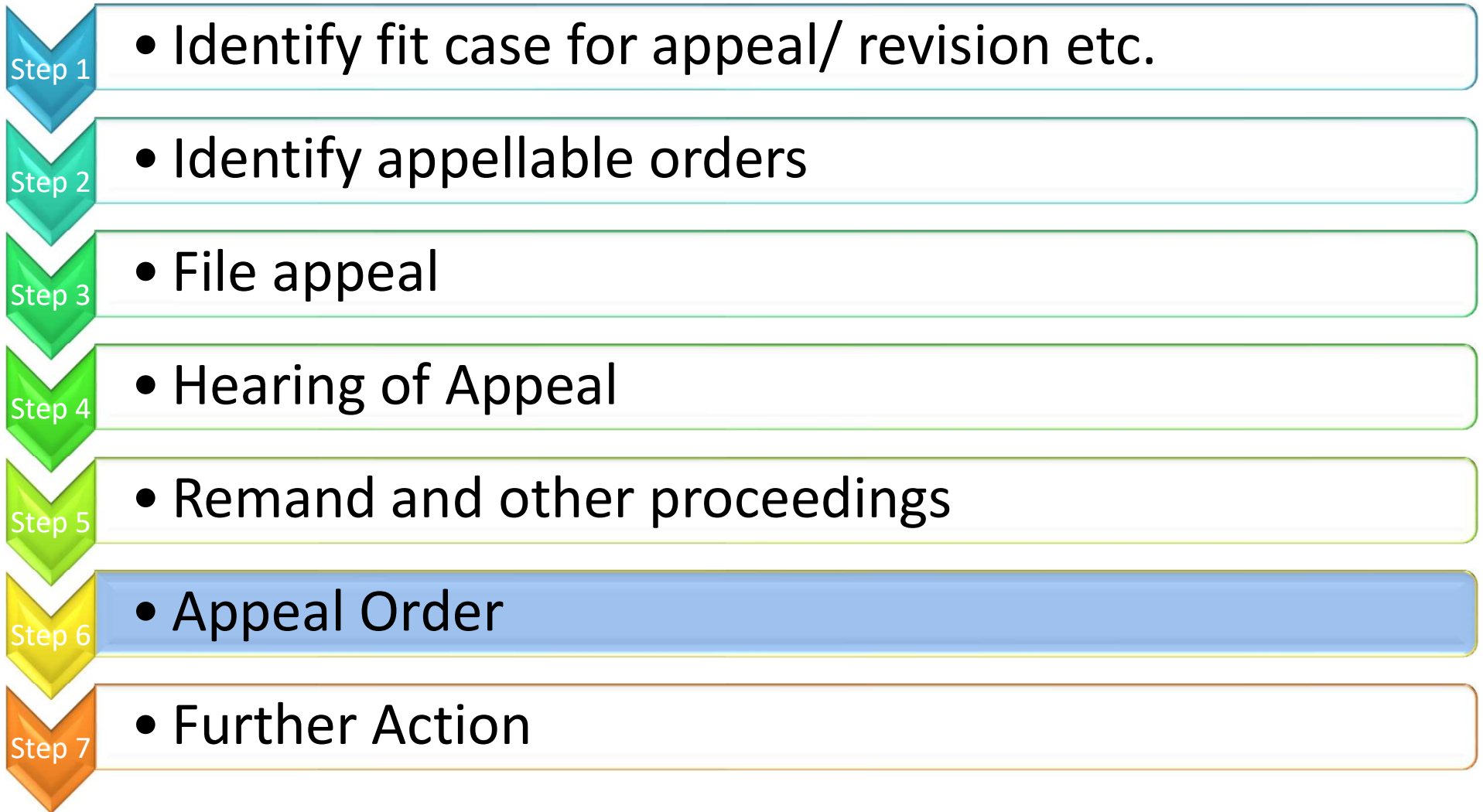
Fresh Evidence

- When Evidence not before AO
- Rule 46A
 - AO refused to admit evidence
 - Appellant was prevented by sufficient cause
 - Sufficient OoBH not given by AO
- CIT(A) can himself call for Addl Evidence
- If evidence material to deciding appeal, same shall be admitted. *CIT vs Saligram Prem Nath 179 ITR 239 (MP); CIT vs Kum. Satya Sethia 143 ITR 486 (MP).*



Remand Proceedings

- When remand done
 - Additional evidence
 - Inquiry by CIT(A)
- Appearance before AO
 - Be ready with documents
 - Appear before AO in remand proceedings
- Copy of remand report and Rejoinder



Powers of CIT(A)

- To be passed within 15 days of last hearing. *[CBDT Instruction No. 20/ 2003 dt. 23.12.2003]*
- Widest amplitude
- Assessment
 - Confirm, reduce
 - Enhance
 - Annul the assessment
 - Set-aside in 144 cases (*ironically no such power to Joint Comm. (Appeals)*)
- Other cases – “as he thinks fit”.
- Can CIT(A) change basis of addition?

Power of Set-aside

Where assessment was reopened in case of assessee under section 147 and completed under section 144 disallowing referral fees paid to doctors; Commissioner (Appeals) instead of summarily setting aside matter to file of Assessing Officer for making a fresh assessment, ought to have taken a call as regards specific ground based on which validity of jurisdiction that was assumed by Assessing Officer for framing reassessment was assailed by assessee before him

EyeGear Optics India (P.) Ltd. vs. Deputy Commissioner of Income-tax [2025] 174 taxmann.com 1060 (Hyderabad - Trib.)[14-05-2025]

Power of Enhancement

- Section 251(2) - “enhance the assessment or penalty”
Expln – “..... Decide any matter arising out of the proceedings in which order appealed against was passed.....”
- OoBH
- Undeniably, the precedential position on the powers of the first appellate authority under section 251 undulates. There are seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lal, there is a consistent judicial assertion that the powers under section 251 are, indeed, very wide; but, wide as they are, they do not go to the extent of displacing powers under, say, sections 147, 148, and 263 of the Act. Considering *Shapoorji Poolonji Mistri 44 ITR 891 (SC)*; *CIT vs Sardari Lal & Co. 251 ITR 864 (SC)*

Power to give directions

- Only for those years/ assessee he is seized with.

CIT vs C.M. Rajgarhia 121 ITR 778 (Pat.), 785

- Directions to do 148 in other years, not valid.

(Curtail) of Power of CIT(A)

- CBDT Letter dt 08.03.2018:
 4. Many technical and legal lapses have also been noticed during vigilance inspections of CIT (Appeals). For instance In some other cases, the additions were deleted in a summary manner solely on the ground that opportunity of cross examination was not given to the assessee. The CIT (Appeals) could have given the opportunity of cross examination to the assessee rather than summarily deleting the additions in such cases since it has been held by Hon'ble Apex Court in a number of cases that the scope of power of CIT (Appeals) is coterminous with that of the Assessing Officer.
 5. In view of discussion in the preceding paragraphs, it is once again reiterated that the CIT (Appeals) should abide by the instructions of CBDT regarding timely issue and dispatch of appellate orders in letter and spirit. It is also important to note that the Apex Court has held that CIT (Appeals) has plenary powers in disposing of an appeal. These powers must be used by CIT (Appeals) judiciously while passing appellate orders.

Dismissal for non-prosecution

- Can CIT(A) dismiss the appeal for non-prosecution?

Gujarat Themis Biosyn Ltd. Vs. JCIT, 74 ITD 339 (Ahd)

Also Om Prakash Sangwan v. ITO- 33(4), New Delhi [2018] 94 taxmann.com 394 (Delhi)

- Course of action in such cases

Stay of Demand

Stay of Demand

- Assessee can apply for stay of demand to
 - AO; or
 - CIT(A)
- CBDT Instruction dt. 29.02.2016
 - Pay 20% of demand
 - Less or higher can be demanded.
- Higher can be demanded only in “exceptional circumstances”



TOI

City

Ahmedabad

Mumbai

Delhi

Bengaluru

Hyderabad

Kolkata

Chennai

Agra

Agartala



TOI

Ahmedabad: The Gujarat high court has halted the Income Tax (I-T) department from recovering outstanding dues from petitioner assesseees while their appeals, pending for over four years, await decisions from the Commissioner of Income Tax (Appeals), under the faceless appeal system. The court's

decision came after dissatisfaction with the I-T department's response to reduce the backlog of appeals from over 5 lakh aggrieved taxpayers.

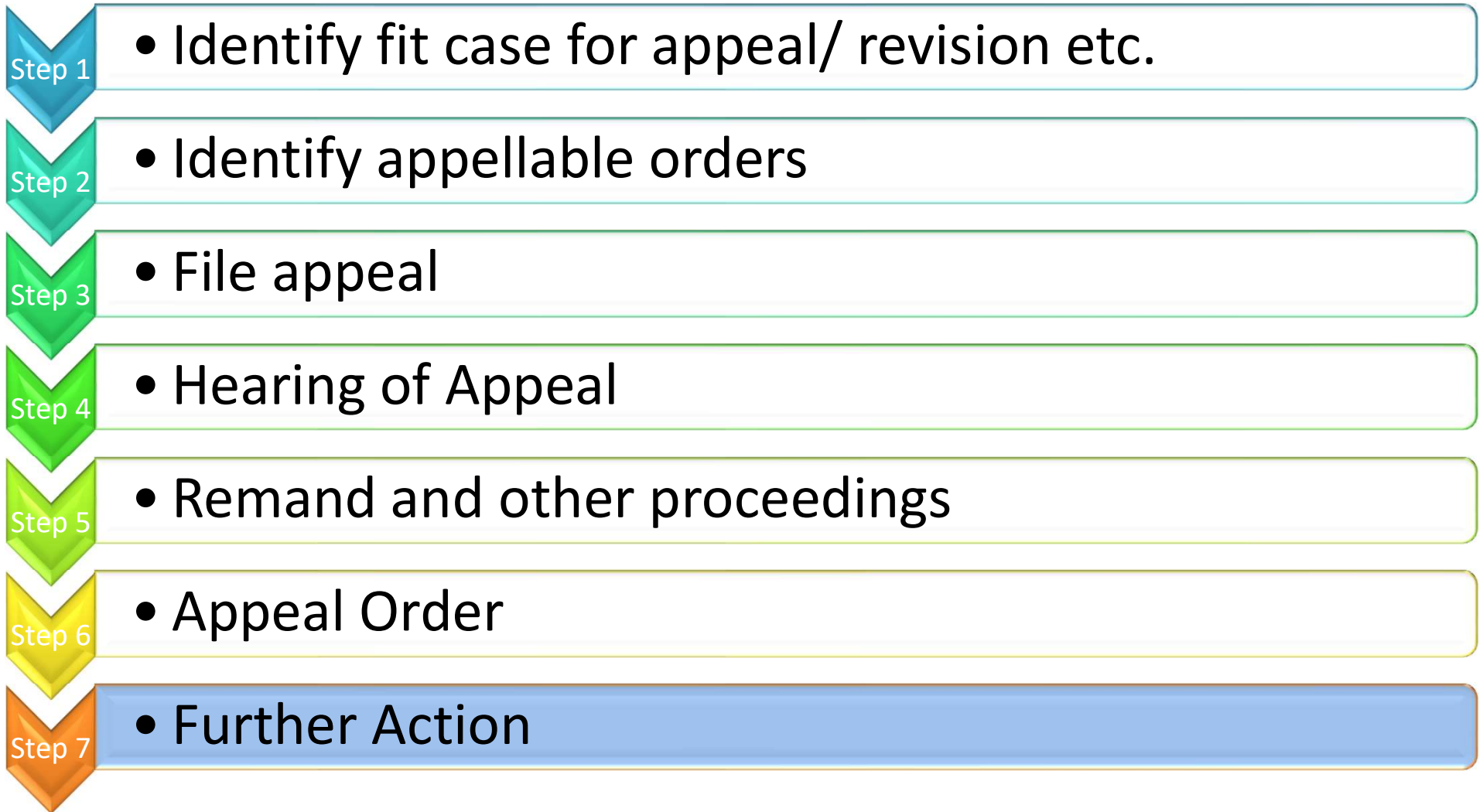
This order applies to five petitioners with unresolved appeals.

These companies had contested the I-T department's tax assessments but faced pressure for dues recovery despite their appeals remaining undecided. The HC had previously allowed these companies to access their bank accounts in March 2020, but since then, no significant progress has been made on their appeals.

The I-T authorities informed the court that nearly 5.8 lakh appeals are pending: 3.9 lakh under the Faceless Commission of Income Tax (Appeals), 80,170 before non-faceless CIT (Appeals), and 1.09 lakh before Joint CIT (Appeals).

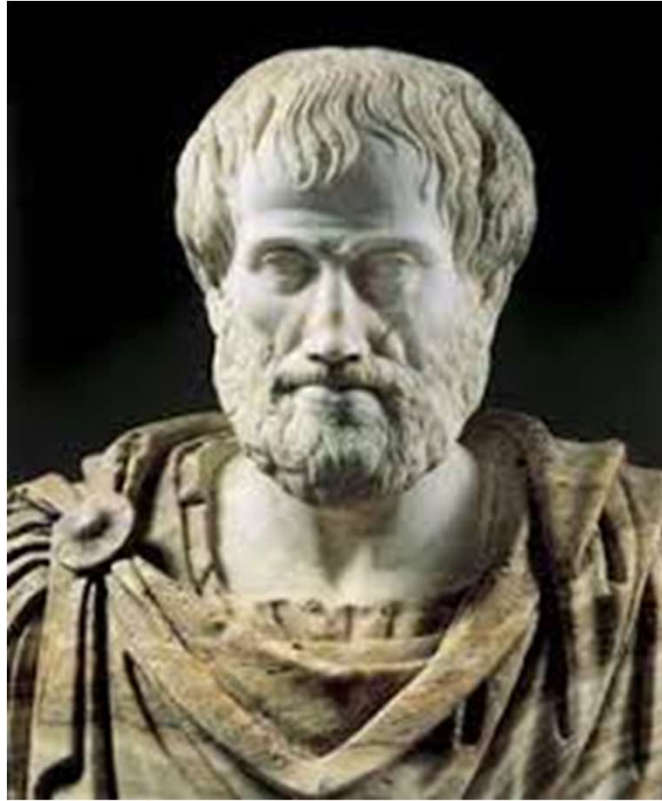
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Further Action

- Read CIT(A) order carefully
- If still aggrieved, decide course of action
 - Rectification
 - Appeal to ITAT
- Apply to AO for appeal effect



“We are what we repeatedly do. Excellence, therefore is not an Act, but a habit.”

- Aristotle

THANK YOU



advagca@gmail.com

9826099277